Public Utilities

FORTNIGHTLY

July 11, 1929

PUBLIC UTILITIES REPORTS, INC.
WASHINGTON, D. C.

New Standards
of Steam Generation

750% BOILER RATING

Boiler ratings up to 750% have been carried for hours at a time on the Combustion Steam Generating units installed at Kips Bay Station of New York Steam Corporation. This is equivalent to over 450,000 pounds of steam per hour from single units.

1800-POUND PRESSURE

1800 pounds per square inch is the pressure specified for the Combustion Steam Generating units we are now building for Philip Carey Company, Lockland, Ohio. This installation will be the largest steam plant in the world operating at such a pressure.

800,000 POUNDS PER HOUR

800,000 pounds per hour is the guarantee on each of three units being installed for the New York Edison Company—660,000 pounds of steam per hour have been delivered by Combustion Steam Generating units installed at the Fordson plant of the Ford Motor Company.

The ability to offer Industry a service which is not available elsewhere—is responsible for these striking accomplishments. Complete fuel burning and steam generating units of coordinated design to meet exactly the individual plant need—comprising boiler, stoker or pulverized fuel equipment, furnace, superheater and air preheater—are sold under One Contract, One Responsibility and one set of guarantees. Our General Condensed Catalog briefly describes Combustion Engineering Corporation Equipment. May we send you a copy?

COMBUSTION ENGINEERING CORPORATION
International Combustion Building • 200 Madison Ave., New York
A SUBSIDIARY OF INTERNATIONAL COMBUSTION ENGINEERING CORPORATION

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Public Utilities Fortnightly

VOLUME IV — *July 11, 1929* — NUMBER

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY; a magazine dealing with the problems of utility regulation and allied topics, including the official decisions of the State Commissions and courts; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication. Published every other Thursday; 75 cents a copy; $15.00 a year; with bound volumes and Annual Digest, $32.50 a year. Editorial and advertising office, Munsey Building, Washington, D. C., circulation office, Duffy-Powers Building, Rochester, N. Y. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.

Union Metal Fluted Steel Pole Design No. 4229 as installed on Woodward Avenue, at Grand Circus Park, Detroit, Mich.

DETROIT
Bans Forest of Poles

DETROIT is proud of its sky-line, of the large buildings which are evidence of its growth and prosperity. But Detroit has diverted attention from sky-lines to curb-lines.

Formerly, separate supports were used for trolley span wires, street lights, traffic signals and street signs. Now the forest of poles which lined the streets of the downtown district is gone.

With the installation of Union Metal Fluted Steel Poles the number of poles along the curb-line was reduced 75%!

Every hundred feet there is a tall, artistically tapered, fluted steel shaft carrying the necessary street electrical equipment. Streets are now more beautiful, more dignified, and a remarkable economy has been effected.

Utilities in many cities are building good will by installing Union Metal Poles and are saving thousands of dollars. We will be glad to send you further information.

Union Metal Fluted Steel Poles used for trolley span wire support and distribution service, Joseph Campau Street, Detroit.

Dedicated by Graybar

THE UNION METAL MANUFACTURING CO.

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UNION METAL
DISTRIBUTION AND TRANSMISSION POLES

Pages with the Editor

WITH this issue, PUBLIC UTILITIES FORTNIGHTLY begins Volume IV.

* *

So highly controversial are the problems incidental to the regulation of the public utilities in this country that almost any phase of them can start an argument of some kind—particularly on the legal, economic, financial and political phases of the subject.

* *

PUBLIC UTILITIES FORTNIGHTLY purposes to publish articles on both sides of these controversies—and to avoid all personalities in the process.

* *

IT is not always so easy for the disputants to avoid personalities.

* *

FOR instance:

* *

THE claim agent of an Ohio interurban trolley line received the following report from one of the track foremen:

* *

"I AM sending you the report on O'Hara's foot, which he struck with a spike maul. Now, where it says 'Remarks,' do you want mine or do you want O'Hara's?"

* *

AN impartial report requires the remarks of both of the interested parties.

* *

IN the rush of going to press with the June 13th number of this magazine, the task of preparing the "Points of Special Interest" index of the O'Fallon decision was unintentionally left unchecked—an oversight that has brought more gray hairs to the heads of the editors.

* *

IMMEDIATELY following the distribution of the June 13th issue, the editors received a sharp note of criticism from the HON. CLYDE B. ATCHISON, of the Interstate Commerce Commission in Washington, D. C.

* *

"POINT 4, in the headnote on page 161," he pointed out (which read "Establishment of general level of rates before recapture of excess earnings of a carrier") "states the contention of a carrier as being the holding of the court. The court rejected the contention, and held the contrary of what is stated in the headnote."

* *

MR. ATCHISON'S criticism is correct.

* *

THE editors are grateful to MR. ATCHISON for calling this error to their notice, and take this opportunity not only of thanking him publicly, but also of apologizing to their readers for the misapprehension that this erroneous headnote has created.

* *

THE mistake is particularly unfortunate, not only because the headnote makes the holding appear to be in favor of the company's contention, but because it gives the opportunity of claiming that the decision was intentionally misinterpreted.

* *

IN the words of the voice with a smile, "Excuse it, please!"

* *

IN the coming issue of this magazine will appear an article that will treat of the age-old controversy that involves the practical economic value of Art. It carries the pertinent title "The Cost of Scenic Beauty—in Kilowatt Hours."

* *

THIS subject is coming up with greater frequency now that so many projects are contemplated for converting water-power into electric energy.

* *

"WHAT a crime it is," observes the beauty lover, "to spoil the wonders of Nature by building power-plants near the loveliest portions of our rivers and streams! There ought to be a law——"

* *

WHILE, on the other hand, the practical engineer's reaction to the enormous undeveloped power resources of this country is "What a waste of energy!"

* *

THE question is being raised in many states as to where the line should be drawn between these two opposing points of view. In other words, when does scenic beauty become of greater value to the people than the electric power that may be derived from it?

* *

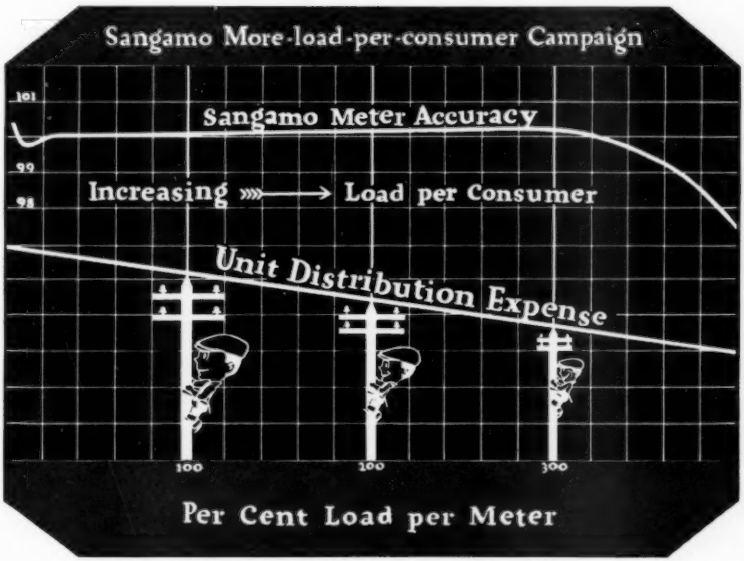
WHICH is another way of asking "What is the practical value of beauty?"

* *

THIS controversy is more than merely academic. State Commissions are being called upon to decide if permits shall be issued to power companies for the construction of plants that will mar the beauties of Nature and thereby affect the aesthetic enjoyment and cultural benefit which the people derive from them.

(Continued on page VIII)

Better Use of Distribution System



The future of the Electric Light and Power industry depends largely upon the development of *load-per-consumer* which means a more effective use of distribution network.

The meter is an important part of any load development plan. It must not only provide for increased load and wide range of load variation, but it must maintain a high degree of accuracy, especially at the high loads, because errors at heavy load mean more dollars loss.

The Sangamo Type HC Meter meets these modern requirements, fitting exactly into the load building program. It has a straight line load accuracy from the lightest up to 300 per cent load and is temperature compensated from 20° to 120° Fahrenheit at all power-factors.

Supplement 67 tells all about the HC Meter. Sent on request.

All modern American meters are far superior in their performance on overload and varying temperature to the best made five years ago. This high degree of perfection in manufacture is due largely to the full cooperation between the American meter manufacturers and the two great national meter committees.

SANGAMO

ELECTRIC COMPANY - - - SPRINGFIELD, ILLINOIS 86-8331-3

ACCORDING to the views of many, the gratification to this artistic sense is purpose enough to justify the expenditure of money—and by the same token, justification enough to deny permits for the construction of plants that seek to convert this aesthetic gratification into units of electrical energy.

* *

THE forthcoming article cites the opinions of various courts and Commissions on this subject, and quotes their reasons *pro* and *con*.

* *

WHILE we are on the subject, why should power-plants and so many other practical business structures be in themselves inattractive? Is there any good reason why a "practical business building" should not conform to the best standards of art and architecture?

* *

As a matter of fact, tremendous improvement has been made in the architectural design of our commercial buildings during the past generation. The modern business structure—as represented by the skyscraper and by the modern factory—is universally accepted as one of the two great contributions that America has made to the art of the world.

* *

PERHAPS our architects will soon be permitted to apply their skill to the beautification of the power plant, too. Is there any reason why it should not be an *object d'art* merely because it is essentially useful and practical and fills a great public need?

* *

WILLARD L. THORPE, whose interesting article on the mergers of electric power and light companies appears on pages 27-31 of this number, is Professor of Economics at Amherst College, Massachusetts.

* *

IN a coming issue BEN W. LEWIS, Associate Professor of Economics at Oberlin College, Ohio, will contribute an article on "Going Value and the Efficacy of Regulation."

* *

AND that will be followed by a series of timely and informative articles on the economic and social aspects of the inter-connection of electric lines by GERALD M. FRANCIS, Professor of Economics at Rockford College, Illinois.

* *

JOHN T. LAMBERT, whose article on the proposed new "Communications Commission," on pages 36-39 of this number, is one of the most experienced of that select group of newspaper men in the nation's Capital, known as "the Washington correspondents."

* *

THE little drawing on page 45 of this number was furnished by HAL MARCHBANKS of the Marchbanks Press of New York—to whom the editors hereby extend grateful acknowledgment.

HERE is a cheering letter to open on a morning when the thermometer is flirting with the 100-degree mark:

* *

"I CONGRATULATE you upon the new PUBLIC UTILITIES FORTNIGHTLY. . . . Either myself personally or the companies that I represent have been subscribers to the publication for many years and have watched its development with interest. I believe that it is one of the most valuable works that a public utility lawyer or executive could have and I keep it constantly available in my work."

—POWELL C. GRONER,
President, Kansas City Public Service Company.

* *

A MOST perplexing problem for telephone companies is the drawing of exchange lines. On the one hand it is undesirable to have too much overlapping or criss-crossing of lines—and on the other hand again, the interests of subscribers may be with the community in one exchange more than in another, sometimes not the nearest exchange. The Wisconsin Commission has given its attention to this proposition in the case of the Wisconsin Telephone Company (see page 433, the "Public Utilities Reports" section of this issue).

* *

ALTHOUGH rate cutting by competing utilities is generally disapproved, offers of lower rates are sometimes made in order to secure approval of an application for permission to operate. The Pennsylvania Commission has indicated that it will not grant certificates to operate on that basis under the modern theory of rate regulation. (See page 436.)

* *

MERE notice that rates will be higher is not, in the opinion of the New York Commission, a valid objection to the new rates where no question is raised concerning their reasonableness. (See page 446.)

* *

WE have had occasion frequently to mention cases sustaining the proposition that credit and deposit requirements may be insisted upon by a public utility to insure payment. The New Jersey Board in a recent decision discusses the reasonableness of such requirements in the case of a telephone company. (See page 451.)

* *

THE interesting question is raised and decided in the case of Passaic *vs.* Public Service Electric & Gas Company before the New Jersey Commission whether a public utility may be required to produce copies of its income tax report in a rate proceeding. (See page 454.)

* *

THE next number will be out July 25th.

—THE EDITORS.

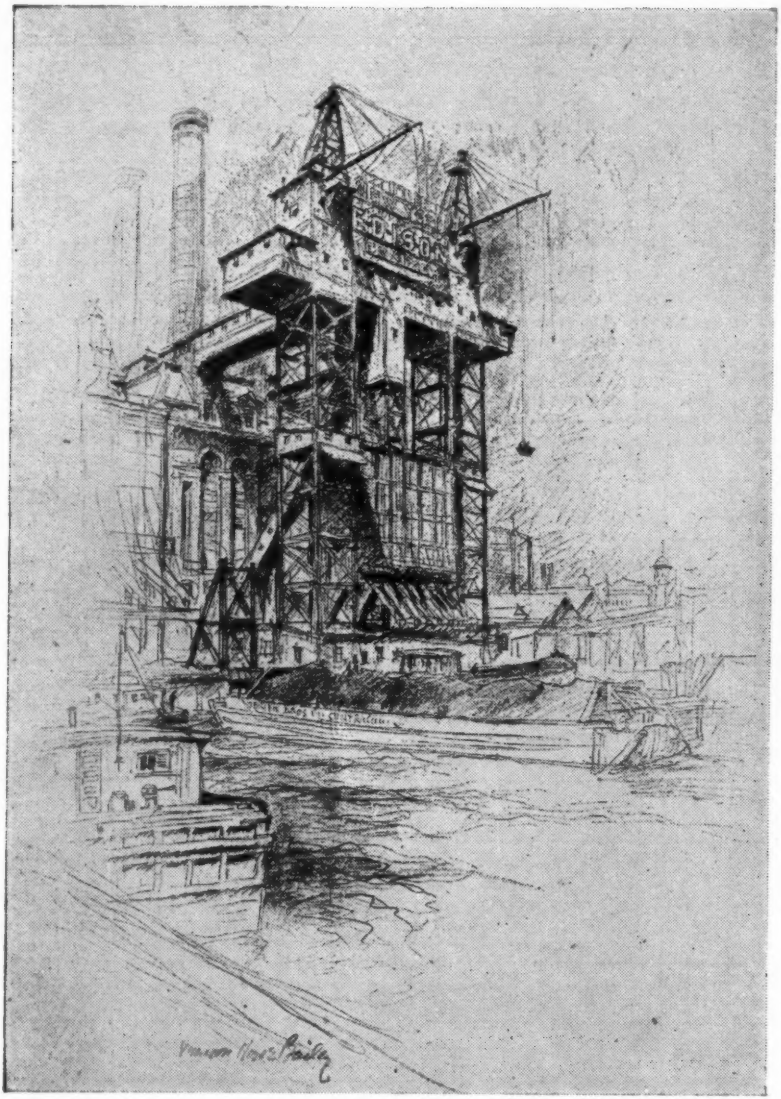
JULY

Utilities Almanac

Reminders of Coming Events			*Notable Events and Anniversaries*
11	T*h*		The Big Four Railroad, following the paralyzing Pullman strike, dropped 6,000 employees and decided to use Wagner palace cars exclusively, 1894.
12	F		J. P. MORGAN, through his London office, formed a syndicate to sell 250,000 shares of VANDERBILT'S N. Y. Central Railroad stock, 1879.
13	S*a*		The Atlantic cable was laid, 1866. Air transportation was given a boost when the dirigible R–34 reached England on its return trip from the U. S., 1919.
14	S		R. W. MEADE, president of the Fifth Avenue Coach Co., put into experimental service in New York the first double-deck motor bus in this country, 1906.
15	M		The undershot water-wheel was first put into operation for creating water power by LOUIS XIV of France, to run his magnificent fountain at Versailles, 1685.
16	T*u*		*¶Start planning now to attend the annual convention of the National Association of Railroad and Utility Commissioners at Glacier National Park, Mont., August 27–30.*
17	W		JOHN JACOB ASTOR, one of the chief promoters of the early Mohawk & Hudson Railroad and chairman of the construction board, was born in Germany, 1763.
18	T*h*		E. H. HARRIMAN, a young downtown clerk, bought a seat on the New York Stock Exchange for $3,000, 1870.
19	F		The first news event to be reported by radio was the Kingstown regatta at Dublin; the radio transmitter was installed in the steamer *"Flying Huntress,"* 1901.
20	S*a*		The Bell Telephone Co. of New York (later to be merged into the American Telephone & Telegraph Co.), was organized to handle city calls, 1878.
21	S		The "Hyde Park Special," pulled by a wood-burning locomotive, started the first suburban railroad service in the United States in Chicago, 1856.
22	M		Transatlantic passenger service began when the *"Mayflower"* left England on its historic voyage to Plymouth, Massachusetts, 1620.
23	T*u*		A band of 300 Sioux Indians attacked a Union Pacific engineering party in Kansas and killed PERCY T. BROWNE, its leader, 1867.
24	W		The telegraph was first installed and used for the purpose of directing the movement of trains of the Illinois Central Railroad, 1851.

"Where there is no vision the people perish."

—BOOK OF PROVERBS



Drawing by
Vernon Howe Bailey

Courtesy of
New York Edison Co.

BATTLEGROUNDS OF INDUSTRY

No. 1: The great coal-unloading machinery at the waterside power station in New York.

"Labor is discovered to be the grand conqueror, enriching and building up nations more surely than the proudest battles."

—WILLIAM ELLERY CHANNING

Public Utilities

FORTNIGHTLY

VOL. IV; No. 1 JULY 11, 1929

The PUBLIC UTILITIES AND THE PUBLIC

ON June 15, 1929, occurred the death of a real pioneer in the electric industry, Charles Francis Brush of Cleveland, Ohio, at the advanced age of eighty. With the exception of his friend and colleague in science, Thomas A. Edison, Mr. Brush has probably had greater influence upon the electric industry than any other man of science.

By coincidence his death occurred at Cleveland in the midst of the great carnival of lights at Niagara Falls, —Lights' Golden Jubilee. While this event marked the fiftieth anniversary of the discovery of the incandescent lamp, it was also celebrated in honor of the fiftieth anniversary of the first illumination of Niagara Falls by arc lights from the laboratory of Mr. Brush, as well as the first application of the tremendous power of that great cataract to a hydraulically operated dynamo, also the product of Mr. Brush.

In 1879, the June 25th issue of the Niagara Falls (N. Y.) *Gazette* describes the installation:

> "The wheel that is to furnish the power for generating the electricity to light Prospect Park this summer has been placed in position, and on Monday the Brush Dynamo Electric Machine was received from the telegraph company. It has already been placed in position and is being fitted today. The machine weighs 2,250 pounds of which weight the copper wire contributes 1,500 pounds. The machine has a capacity for lighting sixteen burners when run at 760 revolutions a minute. Each light will have a brilliancy of 2,000 candle power. The work of erecting the lamps and making the wire connections will be commenced at once, and the park authorities hope to be able to illuminate their grounds and the Falls on the evening of the Fourth."

The first illumination occurred July 4th fifty years ago. It marked the first time that man had harnessed the

greatest of all water falls for electric power purposes. The *Gazette* said:

> "The electric generation used—the Brush Dynamo Electric Machine—has a capacity for lighting sixteen lamps of 2,000 candle power each. Any of the twelve now in use can be *switched off the electric current at will*. The electric apparatus seems to be all its inventor claims for it, and the lamps certainly yield a most beautiful and powerful light."

The "beautiful and powerful light" was given by the arc lamps invented by Mr. Brush. The expression of wonder in those days at such marvels as "lamps of 2,000 candle power" and a dynamo weighing 2,250 pounds having a capacity for lighting sixteen of them when operated at "760 revolutions a minute" seem amusingly naïve to us today, living in an age when power is shot around the country from state to state at 400,000 volts. That a light could be "switched off the electric current at will" seems to us to be the occasion for no editorial comment.

But this very *naïvete* only accentuates the genius of Mr. Brush. He lived at an age when electric power was an unknown force imprisoned in the laboratories of groping scientists. He came to us at a time when the Davy arc lamp was a scientific plaything of no practical value. Yet his greatest achievements, the Brush Dynamo Electric Machine and the first practical arc lamps, were both attained before he had reached his thirties. His later years were directed mostly towards improving these earlier discoveries.

Chance has played a leading part in the recovery by man of many of our greatest discoveries. Bakelite was accidentally formed in a laboratory test-tube and its indestructible qualities were noted only when efforts were made to get rid of it. Quinine, probably the most important specific medicine to be added to the pharmacopoeia until the recent discovery of salvarsan, was literally stumbled upon by a Jesuit missionary in a far off land. Other discoveries and inventions have been the results of fortunate blunders.

But chance played no part in the invention of Charles F. Brush. He did what he set out to do. This fact is pointed out with all due respect to all those scientists who have made accidental discoveries. No one could be more devoted to his work than Edison—no one apparently has been more inspired. His achievements came as a result of long and painful hours in a laboratory and yet even the Wizard of Menlo Park tells us that his inspiration for the phonograph came when he noted the peculiar sound made by a point passing over an indentation made on an impressionable surface during his experiments with telegraphic improvements.

Edison and others are equally true scientists for their happy adventures, but we call attention to the lack of chance in Brush's work to show his persistent drive at his set goal—his tenacity of purpose—or, in other words, to give a true picture of the man—Brush.

He conducted no experiment that was not aimed directly at his object. He did not theorize. He did not speculate. Instead of writing a thesis to prove the ability of electric power to illuminate the world, he went right at the problem and proved it in the

most tangible fashion possible—with his dynamo and his arc lamps. He was first and foremost a practical man. The Cleveland *Plain-Dealer* said of him:

> "Primarily Charles Francis Brush was not a theorist. He was a great scientist but withal a highly practical man. He was one of the most imposing figures in the group of surpassing geniuses whose labors have contributed so highly to the advance of civilization during the past half century. The death of Charles F. Brush ends a career of inestimable value to mankind."

The End and the Means of Law

BACK in the reign of the Roman Emporer Justinian there was a crying need for a codification and restatement of Roman laws. These laws, which were the indirect ancestors of our own jurisprudence, had been accumulating since the semi-mythical times of Romulus and Remus. Originally all Roman law was supposed to be contained in the "Twelve Tables" or tablets. These were regarded as the divinely inspired but as the Empire grew, supplemental, legislative, and judicial interpretation of the "Twelve Tables" became far more voluminous than the tables themselves. Special laws and treaties added to the confusion until at length Justinian ordered the most eminent jurists of the day to collect and recast all these different laws into one comprehensive and coherent code.

It was a mammoth task but it was splendidly done, and the resulting Justinian Code is usually regarded as having had a profound influence upon the law of all civilized countries of the West.

An interesting incident happened during the creation of that code. The Roman jurists commissioned to do the job found the material with which they had to work in a hopelessly confused mass. Repugnancies, inconsistencies, and local discriminations everywhere abounded. They found that it would be necessary, in some instances, to pick and choose from alternatives so diametrically opposed. This was a grave responsibility and they hesitated to assume it without imperial authority. A committee was formed which called upon the Emperor and explained the difficulty.

He replied to the effect that no law should be promulgated which did not have a just and reasonable end, and that no law however just and reasonable should be promulgated which did not describe just and reasonable means of carrying it out. He assured the jurists that he would review their work and sanction their actions unless they appeared to him to be arbitrary.

These words of Justinian appear rather banal in view of the current modern discussion about the morality of law enforcement and the ethical justification for all legislation. Yet it does not appear that these principles have ever been more succinctly stated. However noble the motive may be which inspires a law, that law cannot be enforced by unreasonable means. So also however logical and reasonable enforcement may appear, the purpose of a law must be morally justi-

fied, or else its enforcement will be an insult to justice.

For all our advancement and improvements in the arts and sciences, the reasonableness of the end and means of legislation continues to be as much of a problem today as it was in the days of Justinian. Two questions are, or should be, raised as each law is proposed: Is it a just cause? Can it be thoroughly enforced?

This distinction between the end and the means of a law becomes more important to us because the duty of applying these two tests in the United States is delegated to different departments of our Government. The legislature alone can decide whether a law is wise, moral, just, or well advised. The courts cannot correct a foolish law if the legislature has passed it. The courts can annul a validly enacted law only if it is unenforceable either by reason of the arbitrary methods to be used or because it is repugnant to some other law of superior rank such as the Constitution.

There have been many recent examples of this distinction. The Supreme Court has, in reviewing the 16th, 18th, and 19th Amendments of the Constitution, indicated that it was concerned only with the validity of the enactment of these laws and in the reasonableness of their enforcement. In other words, matters of policy must be settled on the floors of the legislatures ratifying these measures or, if adopted by direct vote, at the polls.

A recent example was furnished by a review of an Alabama statute. Alabama passed a law some years ago that prohibited a railroad from abandoning "any portion of its service to the public . . . unless and until there shall first have been obtained from the (Public Service) Commission a permit allowing such abandonment." Very severe penalties, including punishment of officers, agents, and employees, are prescribed in case the abandonment is wilful.

Without obtaining such permission a certain railroad discontinued two interstate trains and then asked the Federal Court to enjoin the Commission from enforcing the penalties. The United States Supreme Court decided that the state might lawfully require the railroad to seek permission from the Commission before discontinuing service, but held that the punishment of offcers, agents, and employees for the act of the carrier was unreasonable. The railroad was directed to apply to the Commission in a regular manner for approval of their discontinuance, but the state was prohibited from punishing the servants of the carrier.

The distinction between the end and means of a law are here well exemplified.

St. Louis-San Francisco R. Co. *v.* Alabama Public Service Commission, No. 568.

Is a Nation-Wide Uniform Gas Standard Desirable?

THE other day a suggestion was made to us by a manufacturer of gas appliances. Would a nation-wide uniform heating standard for domestic gas service be a good thing? He said that the various standards

set by the different State Commissions running all the way from 450 B.T.U. per cubic foot in Illinois to 600 B.T.U. in New Jersey were beginning to hamper the appliance manufacturer. Up to the present time gas appliances have usually been so adjustable that this variation made little difference to the manufacturer, but he was of the opinion that the uses to which domestic gas will be put in the future, according to the claims of some of our promising inventors, will give the appliance men a new problem; namely, to overcome the variations in the heating value of artificial gas in domestic service. Our friend did not see why this situation should exist. He thought that now would be a good time to start agitating for uniform standards.

This suggestion gave us something to think about. We have always been the friend of uniform laws wherever such legislation is feasible. We deplore the needless conflict of legislalation between the states on relatively unimportant points concerning really important matters. But we are not sure that uniform gas standards are feasible.

In the first place, such a standard could not be applied to natural gas; in the second place, it could never be applied to mixed gas; and in the third place, if it is ever applied to artificial gas throughout the country there is bound to be a violent protest from the soft coal regions, from regions where it is still used for light, and from other localities.

The furnishing of gas has changed a great deal in the last few years. Back in 1916, Commissioner Shaw of Illinois pointed out that the candle-power standard was more or less an obsolete criterion and that the heat-unit measure would be a fairer standard. He said:

> "Very few bare gas flames are now burned by consumers. The average gas consumer now realizes that it is far more economical to take advantage of the savings in gas bills resulting from the use of incandescent burners that utilize the heat content of the gas. High candle power in gas is procured only by the injection of an oil spray during the process of manufacture. Due to the recent marked increase in the price of petroleum products, oil for gas-making purposes is growing more and more expensive."

And then a few other factors must be considered in determining the proper standards. The same Illinois Commission in 1928 allowed a reduction on the B.T.U. content of a supply of gas to encourage the use of coal mined within the state which was unfit to produce gas of a higher value or the usual by-products of other classes of coal, where great economies of production in distribution could thereby be effected and the general service would not be impaired, where increased rates would be necessary if a higher standard were applied.

The Commission, however, refused to set a state-wide standard, stating:

> "On the other hand, due to the fact that operating conditions in different plants are different, it is equally unwise for this Commission to take the position that there should be no variations from the rule as established. . . . The location of the plant is material, as, for example, a plant which can use Illinois coal equally as well as coal from West Virginia may be in position because of freight rate situations to save

money by the use of Illinois coal, whereas another might not be in this position."

The Washington Commission has said that the maintenance of a uniform standard heating value for gas throughout the limits of the entire state was not ordinarily possible or economical. And so, while we have always been strong for uniform laws, as a general principle, we are not sure that this is a proper subject for such legislation. The gas business has changed from a lighting business to a heating business. Even those customers who still use gas for illumination employ superheated gas mantles which depend more on thermal units than candle power.

Some years ago when people first began to consider seriously electricity for illumination, there was a foolish scramble to dispose of gas securities. Many predictions of doom for the gas industry were heard. That industry today is in the finest condition of its existence with a promising future before it. The gas men are just beginning to experiment seriously. Many new gas appliances have been placed on the market—many more are now being created or will be created in the inventors' laboratories. Is it wise, at this time, to tie up such a fair prospect with a rigid and inflexible heating standard even if it were made nationally uniform? We wonder what other gas men have to say about this.

Color Scheme Imitations by Taxi Competitors

Not long ago it was mentioned in these pages that the Pennsylvania Commission had expressed itself emphatically with regard to the importance of motor carrier operators avoiding any scheme of painting or marking or any design which would invite patronage by deception. Chain store operators have for a long time recognized the value of identifying their units in the public mind by attractive and standardized painting and decorating, but, as was pointed out in the previous item mentioned, the taxicab business has, more than any other enterprise, cashed in on the popularity of bright standard colors and the so-called "yellow cab" and "black and white cab" and other distinctively marked vehicles are now more or less national institutions.

The Pennsylvania Commission has made a more recent ruling with regard to the subject that deserves some attention. The ruling was to the effect that before any particular operator or group of operators can obtain the right to the exclusive enjoyment of any particular color scheme or design, they must sufficiently establish the exclusiveness of such standards in the public mind and show that they have always valued such exclusiveness. In the proceeding in question the Commission refused to sustain the complaint of a voluntary association of taxi certificate holders banded together under a common name and decorating their equipment with what they claimed to be a uniform color scheme. The Commission stated:

"There was considerable deviation by some of the members from the color scheme which was discussed

and even some of those in authority did not adhere closely. Some of the members who did subscribe orally or informally to the color arrangement were tardy in actually employing it. Furthermore, the complainants had exhibited this color marking for a relatively short period prior to its use by respondents. It clearly appears also that no serious efforts were made to prevent the members from disposing of their equipment without first painting out the allegedly distinctive coloring or stipulating with the purchasers as to eliminating any or all resemblances in color."

No testimony from a representative of the riding public was added in either proceeding to indicate that the average man would be or had been induced by the alleged imitation colored cabs to confuse the equipment with that of the complainant's. This seems to be the test in such cases,—that is—would the average prospective patron be deceived and misled in awarding his patronage?

Farley *v.* Miller, Complaint Dockets Nos. 7895, 7901.

Has a Commission a Right to Regulate Utilities Not Yet Functioning

A FIRST class controversy seems to have developed at Rayville, Louisiana, about natural gas operations. It involves the old question: "When is a public utility?" Or to make the question more applicable: "Can the Commission regulate a utility before it has started to serve?"

Not long ago the Louisiana Commission issued an order directing the Rayville Gas Company to appear and show cause why it should not be fined for failure to file tariffs, and to cease and desist from any further progress towards becoming a utility. The company was then in the process of construction. The company filed tariffs under protest which were rejected by the Commission. The Commission then described the contentions of the company:

"The only question to be determined, at this time, is as to whether the Rayville Gas Company, Incorporated, or any other person or persons, may engage in the business of a public utility unless and until authority so to do has been sought and procured from this Commission after an appropriate investigation to determine whether or not the operation of such utility is in the public interest. Manifestly, this Commission cannot prohibit the laying of pipes, mains, and connections, or the construction of any of the physical elements of a natural gas plant, but the question of whether the owners of such physical properties may engage in the public distribution and sale of natural gas, in competition with an established plant, admittedly under the jurisdiction of this Commission, against whose service or rates no protest has been urged, is a most serious question, and in the public interest it must be definitely settled."

The Commission thereupon settled it as far as it could by deciding that it had jurisdiction over the Rayville Company, and a final order was issued directing the company to desist from all further utility activity.

Now it appears the matter is in court. The question raised seems to us both important and novel in view

of the peculiar powers delegated to the Louisiana Commission. In most states the answer would be easy since most statutes expressly forbid the beginning of any utility construction or other activity tending towards utility service without permission of the Commission, usually through the medium of a certificate of convenience and necessity. But the Louisiana Commission does not depend upon a statute for its powers. It is created by the state Constitution and, therefore, its powers must be expressly delegated or necessarily implied. This document says:

> "The Commission shall have and exercise all necessary power and authority to supervise, govern, regulate, and control . . . gas . . . utilities in the state of Louisiana."

Decisions from Arkansas, Nebraska, and North Dakota seem to indicate that a Commission having general jurisdiction to regulate does not have, by implication, jurisdiction to prohibit operation. It has been said that "the power to regulate is not the power to forbid."

On the other hand, the District of Columbia Commission endowed with general regulatory powers has apparently required motor carriers to obtain certificates without any objection being raised. In other words, the outcome of the Rayville contest promises to be an interesting contribution to public utility law.

❦

Interstate Bus Operators Must Have Good Reputation

EVER since the United States Supreme Court went on record as denying to the states and their Commissions the power to regulate interstate motor carriers there has been a series of decisions, one by one going a step further in holding that on certain matters of purely local policing, the state may reach even interstate motor utilities.

First of all the highest court itself conceded the right of the states to require such carriers to go through the formality of obtaining permission to operate even though such permission had to be given as a matter of course. Next, it was conceded by the Federal Court that the states had the right to regulate interstate busses as to speed and safety and to require indemnity insurance.

Ohio has been ever the leader in asserting her rights to control in some respects at least interstate operators. Another step was taken not long ago when her Commission revoked the certificate of an interstate operator persistently violating state laws. And now comes a ruling from the Ohio Commission refusing the application of a would-be motor utility operator to engage in interstate commerce where it was shown that he had been convicted several times, both in Ohio and in Pennsylvania of violating the liquor laws.

The Commission stated:

> "In granting a certificate, even one restricted to operation in interstate commerce, this Commission vests in the operator the responsibility of transporting passengers to and from points in this state. It is more than a possibility that the authority to

operate regularly would be exercised for unlawful purposes and, certainly, it would not be an abuse of discretion to refuse this applicant the right to operate upon and over the highways of Ohio, and thus prevent the misuse and abuse of such authority, where there has been no showing to the contrary, particularly in view of the fact that the State Bureau of Motor Vehicles, another branch of the state government, will refuse to grant an application for a registered chauffeur's license when such facts are brought to its attention."

Re Dodig, No. *3727*.

Radio Regulation Receives Judicial Endorsement

THERE has been a very strong and interesting opinion handed down by Judge Wilkerson of the United States District Court of Northern Illinois sustaining the action of Attorney General Sargent asking for an injunction against a company attempting to broadcast radio programs without first securing permission of the Federal Radio Commission. The decision marked the first real endorsement by the judiciary of any attempted radio regulation.

Radio regulation in the past has been legally more or less of a failure. Attempted regulation by President Hoover when he was Secretary of Commerce as far back as 1920 was squelched by a Federal Court. The Court ruled that the Secretary of Commerce did not have the authority to decide who should and who should not broadcast but merely the authority to make all broadcasters use the most available and convenient wave lengths. Prior to that action the only law in the statute book covering the regulation of radio communication was one enacted far back in the days when such communications consisted only of code signals. Such legislation was, of course, inadequate to control the newly developed radio industry as we know it today.

These failures gave rise to the Radio Act of 1927. In that year a station at Homewood, Illinois, operating under the call letters WMBB and WOK asked the newly authorized Federal Radio Commission for a temporary license of sixty days, and at the expiration of that period the company operating the station was notified that the Commission was not satisfied that public interest, convenience, or necessity would be served by its continued operation, and the application was finally denied. The company continued to broadcast.

On these facts the Attorney General asked the Federal Court for an injunction to restrain the company, and Judge Wilkerson in his opinion cleared up many important points on the validity of the Radio Act of 1927.

First of all the Court held that the authority of Congress under the commerce clause of the United States Constitution extends to every instrumentality or agency by which interstate commerce is carried on, and it is not limited by the fact that interstate and intrastate transactions may become so interconnected that the Federal Government of the former will necessarily control the latter. The Court ruled that under this clause Congress could regulate the broad-

casting of radio communications, and in the exercise of such regulatory powers could impose such restrictions on property as the state might impose in the exercise of its police power.

The powers of Congress under the commerce clause, it was said, extends to the adoption of all measures reasonably necessary for the prevention of nuisance resulting from unregulated radio broadcasting.

Probably the most important point of the decision was the statement that the granting of licenses to radio broadcasters under the Radio Act of 1927 does not detract from the regulatory powers of Congress to control this industry in public interest since regulatory powers cannot be bargained away, and that the order of the Radio Commission denying a license to radio broadcasting is not void unless the action of the Commission is proven to be arbitrary or contrary to evidence. The opinion betrays much research. The Court said:

"In making allocations it is necessary to consider the 'service area' and 'nuisance area' of stations. The carrier wave travels far beyond the area in which the station can give good service to listeners into areas where it is still sufficiently strong to cause objectionable heterodyne interference with the broadcasting of other stations. In practice, conditions vary to such an extent that the service area and nuisance area can be defined only with approximate accuracy. A definition of the different types of areas under average conditions during evening hours is shown by the following table:"

Power of Station	*Mile Area of very good service*	*Mile Area of good service*	*Mile Area of fair service*	*Mile Nuisance area*
50 wts.	2	10	100	300
100 "	3	15	150	450
500 "	6	30	300	900
1,000 "	9	45	450	1,350
5,000 "	20	100	1,000	3,000
50,000 "	60	300	3,000	No limit

United States *v.* American Bond & Mortg. Co. No. 8704.

Edison's Electric Light

"Besides the enormous practical value of the electric light, as domestic illuminant and motor, it furnishes a most striking and beautiful illustration of the convertability of force. Mr. Edison's system of lighting gives a completed cycle of change. The sunlight poured upon the rank vegetation of the carboniferous forests, was gathered and stored up, and has been waiting through the ages to be converted again into light. The latent force accumulated during the primeval days, and garnered up in the coal beds, it converted, after passing in the steam engine through the phases of chemical, molecular, and mechanical force, into electricity, which only waits the touch of the inventor's genius to flash out into a million domestic suns to illuminate a myriad homes." *

* From an article by F. R. Upton in Scribner's Monthly, February 1880.

The "Resale" of Telephone Calls

Should this service be regulated, and if so, how and by whom?

Here is an unsolved problem in public utility regulation that directly affects the guests of hotels, the tenants of office buildings, and the members of clubs who are accustomed to pay such varying toll charges as are established by each of these private agencies which maintain their own switchboards—and which buy telephone service at wholesale rates for re-distribution at retail rates that may or may not be subject to control by the State regulatory Commissions.

By ELLSWORTH NICHOLS

OWNERS of apartment buildings in Washington, D. C., by announcing an increase in telephone service charges to tenants, from 50 cents to $1 a month, recently stirred to action both their tenants and the telephone company.

The tenants complained to the Commission against the increase, and the Chesapeake & Potomac Telephone Company sought authority to refuse service where it is resold at a higher rate.

The Commission on February 18th of this year had held that electric utilities could refuse to allow the resale of current through submeters to tenants,* and there was some question whether that ruling might also include telephone service.

SOME years ago the District Commission investigated the question of reselling telephone service, on complaint from tenants of apartment houses, with the result that the Commission's general counsel ruled that the subject was outside of the Commission's jurisdiction, as it was a contract matter between the owner and the tenant.

Since that time it has been the general practice to make a charge of either 5 or 10 cents a call through a private branch exchange board at hotels and apartment houses. In many instances the rate on the majority of calls has been 3 cents to the owner. In a number of cases, however, a flat rate has been assessed by apartment house owners on a monthly basis, in addition to a regular charge for messages.

This problem of service to apartment dwellers and hotel guests is not confined to the Nation's capital, but has also attracted attention in other parts of the country. The resale of telephone service at a profit prevails in several states: for example, in

Re Potomac Electric Power Co. (D. C.) P.U.R.1929B, 600.

Florida, Michigan, Oregon, and Washington, while in other states, (among which are included Arkansas, New Mexico, and Tennessee) it is said to be the practice not to permit such resale. No decisions by the Commissions have dealt with the question in Connecticut, Idaho, Minnesota, Montana, North Dakota, and Vermont. In other states, such as Iowa and Texas, the Commissions do not regulate telephone service.

In large apartment houses and office buildings in Nevada a switchboard is installed and the service accorded to the patrons is included in rental of the rooms or offices. Generally speaking, this is not satisfactory, and the Commission has reports of cases where owners of apartment houses have made an allowance of $2 a month in the rental to compensate for switchboard service that might otherwise be furnished, and the patrons have, in consideration thereof, installed their own telephones.

It seems to be the practice of the larger telephone companies in Pennsylvania to provide in their tariffs for an increased charge on local calls made from hotels, the hotel being made the agent for the collection of the charge, retaining the difference itself.

THE Northwestern Bell Telephone Company, which operates in South Dakota, in their filing for private branch exchange service and in their contract for such service provides that the rates charged guests or patrons for local and long distance messages shall be the telephone company's lawful established rate for such messages and no more. The Board in that state, however, has not had occasion to investigate the matter and, consequently, has made no ruling or decision with reference to it.

In the state of Tennessee it is reported that in no case have the rates for telephone service been advanced by any hotel. The rates billed the guests are the regular charges of the telephone company for such service.

The New York Telephone Company tariff applicable in New York city is as follows:

"When service is furnished to hotels and apartment houses in the city of New York the subscriber may, at his option, permit guests, patrons, or tenants, except tenants conducting stores, shops, or other business places in the same building, to use the service, but under no circumstances shall the charge for such use be greater than shown below:

	"MAXIMUM CHARGE (each)
"For local messages as defined in these tariffs - - - -	10 cents
"For toll messages as defined in these tariffs:	
When the subscribers' station-to-station rate is 5 cents -	10 cents
When the subscribers' rate is 10 cents or more -	Same as subscribers' rate

"In granting the subscriber the privilege of permitting third parties to make use of his service, the company specifically limits and restricts its responsibility for such service as follows:

"1. It does not offer to supply service to hotels and apartment houses except as such service may be subscribed for by such hotel or apartment house.

"2. It does not offer to supply service to guests, patrons, or tenants of hotels, or tenants of apartment houses except at the regular rates for residence or business service applicable to subscribers generally.

"3. It does not assume or profess any liability or obligation whatsoever for the operation of the private branch exchange switchboard and system of the subscriber or for the distribution of incoming calls which may be received at such switchboard.

"4. It does not assume any responsibility for compelling subscribers to this class

Hotel Companies Are Not Public Telephone Corporations

"Hotel companies are not public telephone corporations. If a private 'phone is installed, the subscriber may well permit others to use this 'phone or refuse its use entirely, but he should not be allowed to sell service unless he does so as an agent of the telephone corporation, and thus be under regulation of the Public Service Commission, and have the service rendered in accordance with a filed schedule of rates. The uncontrolled retail selling of telephone service by those unauthorized to conduct such a business is contrary to the spirit of the legislative regulation of public utility companies and the service rendered by them."

—FORMER COMMISSIONER THOMAS F. FENNELL, OF NEW YORK

of service to permit its use on any terms whatsoever by guests, patrons, or tenants.

"5. It does not extend or enlarge the privileges of directory listings given to subscribers generally.

"6. It does not extend or enlarge its undertaking as defined in P.S.C.—N.Y.—No. 1, § 19, as regards public telephones."

WHERE the question has been squarely presented, the Commissions have adopted a view that unregulated service and charges by apartment buildings and hotels violate the spirit of the Public Service Commission laws. This is analogous to the situation in regard to the reselling of electric service.* A possible exception is the state of Massachusetts (as will later appear), since its latest report indicates that the regulation of such service may be inadvisable.

In a case in New York, it was held that a hotel has no right to make a charge to its guests for the use of telephones in addition to the scheduled rate of the utility, where the service rendered to the guests is in the nature of general telephone service, but may charge for such service as is purely in the nature of a hotel facility and pertains to the guests solely as such. Commissioner Fennell said:

"When a public utility company installs its telephone system within a hotel it is installed there as a part of its public utility system, and is extended to the various rooms of the hotel to reach the consumer of the utility company's product. The hotel is the 'subscriber' and is the 'listed party,' but when guests use 'out calls' or receive 'in calls' they are the actual consumers or users of the service of the public utility, and the hotel is not the user. . . . The hotel, however, does charge for outside calls where its employees render practically no service.

"From this it will be seen that the proprietor of a hotel is charging not for service of a hotel facility character but is charging for service of a public utility character. This latter business the hotel proprietor has no legal authority to conduct. Hotel companies are not public telephone corporations. If a private 'phone is installed the subscriber may well permit others to use this 'phone or refuse its use entirely, but he should not be allowed to sell service unless he does so as an agent of the telephone corporation, and thus be under regulation of the Public Service

* See "The Right of the Landlord to Resell Current to Tenants," PUBLIC UTILITIES FORTNIGHTLY, April 4, 1929, page 365.

Commission, and have the service rendered in accordance with a filed schedule of rates. The uncontrolled retail selling of telephone service by those unauthorized to conduct such a business is contrary to the spirit of the legislative regulation of public utility companies and the service rendered by them."

The telephone company was required to file a schedule of rates applying to apartment houses and hotels, including corridor and guest room service, for calls to points outside such apartment houses and hotels.*

THE rule of a telephone company refusing to list tenants of subscribers in its directory, notwithstanding the installation of a central switchboard and auxiliary equipment by an operator of a building, for an extension of service to each tenant as part of the rental, was held by the New York Commission to be a reasonable and proper retention by the utility of its control over its own service. It was the opinion of the Commission that the policy of permitting the intervention of a third party between a utility and the ultimate users of its product is not one which should be encouraged unless and until changed situations, or different public demands, require such action.†

The practice of a hotel of purchasing telephone service at wholesale rates and retailing it to the public at from two and one-half to five times the price paid the utility, by means of switch boards and other equipment installed by the utility in the hotel lobby and controlled and operated by the hotel in connection with the utility's outside equipment, it has been held in Illinois, is an unlawful discrimination against other pay stations which are not allowed such a great proportion of the receipts and whose entire equipment is under the sole control of the utility.* The furnishing of telephone service to the public by means of switchboards and other equipment installed by the utility in the lobby of a hotel, but controlled and operated by the hotel in connection with equipment without the hotel controlled and operated by the utility, has been considered objectionable as dividing the responsibility for the service.

LIKEWISE, in Arkansas it has been ruled that a hotel which establishes telephones in its rooms, cannot, for out-of-hotel service, charge a greater rate than that charged by the telephone company. Commissioner Wood said that hotel proprietors had not the right to fix a schedule of rates for calls from hotel lobbies or guest rooms to points outside the hotel, as the uncontrolled retail selling of telephone service by those unauthorized to conduct such a business was contrary to the spirit of the legislative regulation of public utility companies and the service rendered by them. If the proprietor of a hotel permitted a public utility company to install its system upon the hotel property to reach telephone users in the hotel lobby and in guest rooms, a fair arrangement might be made for such

* Connolly *v.* Burleson (N. Y. 2d Dist.) P.U.R.1920C, 243.

† Gelsam Realty Co. *v.* New York Teleph. Co. (N. Y.) P.U.R.1929A, 224.

* Hotel Sherman Co. *v.* Chicago Teleph. Co. (Ill.) P.U.R.1915F, 776.

¶ *"It is apparent that the prevailing view is that all public utility service should be subject to regulation and that telephone service to tenants of apartment houses and guests of hotels is no exception."*

use of the premises, but the permission to use such hotel premises to install a telephone system did not change the nature of the service. It remained public service, subject to regulation, and such permission could not transmute a hotel company into a public telephone company possessing the functions of such a corporation but free from its duties.*

PERHAPS the most comprehensive investigation and report on the subject of telephone service at hotels and apartment houses is that of the Massachusetts Department of Public Utilities, which made a special report to the legislature in 1926. The Department reached the conclusion that it was inadvisable for the present to enact legislation empowering the Department to regulate and supervise telephone service furnished or dealt in by hotels and apartment or office buildings. The conclusion in regard to apartment and office buildings was fortified by the belief that such legislation would be unconstitutional.

The power to regulate telephone service furnished by hotels was sustained, in the opinion of the Department, by the fact that the hotels had for a long time been considered as enterprises affected with a public interest which might properly be regulated. The situation with respect to the so-called apartment hotels appeared to be entirely different, as such hotels were not inns and the owners of them did not profess to serve the public. On the contrary, by their conduct, they denied any duty to serve the public indiscriminately.

The Department described the operations of telephone companies in hotels by stating that the telephone company had either paid to the hotel a direct rental for the space occupied by public pay stations or a commission on the receipts. Subsequently, many of the hotels took over the lobby telephone service connected to stations with their private branch exchanges and employed the operators. Telephone service to or from rooms in hotels was furnished through the private branch exchange. In some hotels there were at the time of the report no regular pay stations whatever. In others, the telephone company operated coin box pay stations at which the regular rate for calls was charged.

AT first, it was stated, hotels made no charge beyond the established telephone company's rate for calls. Soon, some of the hotels began charging 10 cents for local 5-cent calls, and other hotels charged 15 cents for such calls. More recently, the hotels by agreement among themselves had more or less standardized

Re Hotel Marion Co. (Ark.) P.U.R. 1920D, 466.

their charges. Practically all of the larger hotels in the city of Boston had a rate of 15 cents for local 5-cent calls, an excess charge of 15 cents on all toll calls under $1, and an excess charge of 25 cents on all toll calls over $1. Some of the hotels in the city only charged 10 cents for local calls when made in the lobby. Most of the hotels outside of Boston, which had private branch exchanges, charged 10 cents for local calls and a small excess charge on toll calls.

The investigation demonstrated that the cost of handling the telephone service in hotels varied with the different hotels. There seemed to be no standard measure which could be applied. A wide variety of factors entered into consideration in determining the cost of furnishing the service with different results in various hotels. It, therefore, seemed doubtful to the Department that any flat rate could be established which would be fair to all hotels in the Commonwealth or even in the city of Boston.

REFERENCE was made to an order made by the Department in 1918,* which order, owing to changed conditions not foreseen, was not carried out. The order provided that all telephone companies doing business within the Commonwealth be required to cease rendering licensed innkeepers private branch exchange telephone service except upon the condition that the service so furnished should not be resold by the subscriber to the public or any section thereof either directly or indirectly through a charge for the use of the instrument and apparatus. The Department at that time said:

> "While the hotels are not furnishing telephone service, however, it appears that they are dealing in such service. In effect, they buy at wholesale and sell at retail. Whatever compensation the telephone company receives for messages sent from the hotel is paid by the hotel, but, if the message is sent by a guest or by any other person who is not in its employ, the latter charges and receives compensation on its own account. The question arises whether such reselling or retailing of service is lawful, and whether the hotels are authorized to engage in the telephone business even to this extent. The question has an importance beyond the immediate issue presented in these proceedings. If a hotel may lawfully buy service in bulk and resell it in this way, presumably the same course may be followed by other proprietors. Thus, the owners of an office building might take service for the entire building upon a private branch exchange basis, and retail it to their tenants at such prices as they saw fit; the owners of a department store might adopt a similar plan in providing telephone facilities for their customers; or a railroad company might resell in this way within the confines of a passenger station, like the North station or South station in Boston. Indeed the owners of all the buildings located within the limits of any city block might establish a joint private branch exchange and require all tenants to take their service from that source."

THE Department thereafter undertook to deal with the situation by directing an order against the telephone companies prohibiting them from giving the service except upon certain conditions. Without passing

* *Re* Hotel Teleph. Service and Rates (Mass.) P.U.R.1919A, 190.

upon the question whether the order could in its then form have been legally made or whether such an order would be reasonable, it seemed to the Department at the time it rendered its 1926 report that it was not the most desirable manner of dealing with the problem. It was pointed out that if the legislature should deem it advisable to have such charges regulated, the more logical method was to do it directly by enacting legislation authorizing the Department to regulate and supervise such service and the rate charged by hotels therefor. Legislation at that time, however, was not recommended.

GOING outside of the immediate problem of service to tenants or hotel guests, we may find some suggestions in a ruling by the California Commission; although it relates to a telephone system that extends over certain territory, it also involves the question of service to private property or for tenants. The Commission held that a private corporation, owning and operating lumber mills, stores, and other properties, which constructed and operated a telephone system primarily for its own convenience, was engaged in public utility service when such a system had outgrown the company's own immediate needs, and was supplying service to all applicants therefor and rendering toll service in conjunction with public utility lines at a fixed schedule of rates.

The Commission, in making this decision, said that since the legislature had made a special exception in the case of gas corporations and electrical corporations concerning the use of a telephone on private property or for tenants, it evidently had the matter of such an exception in mind, and that it was not the intent to allow telephone corporations to be exempted from the Public Utilities Act merely because they served their commodity only to tenants or upon private property—a situation which existed in the instant case.*

THERE are many differences between the services furnished by a telephone utility and those of an electric company.

In the one instance, the specified commodity is delivered capable of measurement, comparison, and restriction as to quantity and quality.

In the other instance, what is essentially provided is an instrumentality for service, because two parties are required to every telephone conversation, and if there be faulty operation of connections or poor service the other party to the conversation suffers equally with the subtenant or the person who procures the service from the middle man.† This would seem to indicate that even where submetering of electricity may be permitted, the resale of telephone service may be disapproved.

It is apparent that the prevailing view is that all public utility service should be subject to regulation, and that telephone service to tenants of apartment houses and guests of hotels is no exception. It may not always be expedient, however, to attempt uniform regulation of hotel rates.

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* Nevada C. & O. Teleg. & Teleph. Co. *v.* Red River Lumber Co. (Cal.) P.U.R.1920E, 625.

† Gelsam Realty Co. *v.* New York Teleph. Co. (N. Y.) P.U.R.1929A, 224.

Remarkable Remarks

H. I. PHILLIPS
Columnist of "The Sun," N. Y.

"The electric vibrator is now all the rage in physical culture cults, and this department is informed of a scofflaw who pours equal parts of gin, orange juice, and bitters down his throat and then puts the vibrator belt around his tummy."

ARTHUR HUNTINGTON
Railway executive and economist.

"Why is America rich? Simply because by the use of power and equipment we have increased the output per worker until we are the greatest producers of all of the nations."

BERTON BRALEY
Writer.

"Where the Slave of Aladdin's Lamp might move a palace a thousand miles, the slaves of Edison's lamp have moved civilization forward a thousand years."

JOHN J. BLAINE
U. S. Senator from Washington.

"In the past, great financial interests, including the power companies, have contented themselves with controlling the editorial policies of newspapers by advertising contracts. Now, apparently, they are prepared to color the news columns in order to distort the news to fit their propaganda."

PRESTON S. ARKWRIGHT
President, Georgia Power Co.

"For every dollar spent on advertising our customers get manifold returns, for it helps us to increase the consumption of electricity and thereby reduces the cost of production and distribution, which in turn is reflected in lower rates."

JULIUS H. BARNES
Chairman of the Board, U. S. Chamber of Commerce.

"In regulating industry, in our own self-interest there must be left a field of opportunity which will attract to that industry the same energy and initiative applied in other private fields, else the public interest suffers."

GEN. J. J. MCCARTY
Vice-president, American Telephone & Telegraph Co.

"The pure scientists are the advance guard of civilization. By their discoveries they furnish to the engineer and the industrial chemist and the other applied scientists the raw materials to be elaborated into manifold agencies for the amelioration of the condition of mankind."

PROF. EMILY GREENE BALCH
Economist.

"I do not always or necessarily agree with all the proposals of the People's Lobby or always wholly like its tone. I think this makes my belief in its usefulness the more significant."

O. O. MCINTYRE
Columnist.

"For many years Henry L. Doherty, the public utility magnate, lived in a dingy walk-up apartment in abandoned Bridge street on the island's lower tip. At night, when traffic desolated the section, he would sit for hours at a mechanical pipe organ, or perhaps make a 5-cent round trip on a Staten Island ferry."

ARTHUR BRISBANE
Editorial writer for the Hearst newspapers.

"Our Government borrows money; a few days later Canada's National Railway Company, *government owned and operated, mind you,* borrows $40,000,000 in New York on better terms than Uncle Sam can get. Is the Canadian National railway's credit better than that of this Government?

DAVID LAWRENCE
Editor, U. S. Daily.

"There would, of course, be opposition to any proposal to deny mail privileges to newspapers that were owned by power companies or any other interests, for the same principle has been debated before, and the fear has been expressed that to deny one group of citizens the right to own properties might lead to similar discrimination against others and might be eliminated by the courts on constitutional grounds."

R. H. ASHTON
President, American Railway Association

"Through organized effort the railroads have reduced from $119,833,127 in 1920 to $37,146,813 in 1928, or 69 per cent, the amount of freight claims paid by them growing out of loss and damage to freight shipments. This reduction has taken place in the face of the fact that the volume of freight now is approximately 7 per cent greater than nine years ago."

MISS ELOISE DAVISON
Home Economics Advisor.

"There are twenty-eight million homes in these United States. The figures which are available indicate that it takes on an average of eight hours a day of someone's labor within the home to keep it functioning."

ED HOWE
Newspaperman and philosopher.

"Mr. Hearst's indignation because the International Paper Company acquired stock in certain newspapers is greater than that of any other editor, but actually it does not make any difference who owns newspapers, so long as they are as worthy men as are the directors of the International Paper Company."

The Rise and Fall of the "Penny Carfare"

THE celebrated tramway system of Glasgow, Scotland, has for so many years been successfully owned and operated by the municipality, and its "penny fare" has attained such world-wide fame, that the experiment has long served as a model for what government ownership can be. But during the past ten years the value of money has shrunk, operating costs have risen, fares have been increased, and the competing motor bus has arrived. Now the Glasgow tramways are facing much the same problems that confront the street railways in the United States. The present state of the Glasgow experiment is here described; it is of timely interest inasmuch as it is a reflection of the conditions that are bringing gray hair to the heads of the street car companies on this side of the Atlantic.

By J. B. M. CLARK

IT was with a distinct feeling of shock, and with more serious inward misgivings than he cared to own, that the believer in municipal ownership of public utilities heard the dire news a few years ago that the famous Glasgow tramways were no longer the paying proposition they once had been, and were indeed having a hard struggle to hold their own.

In the old days the Glasgow tramway service was known all over the world for its efficiency. The managing men were uniformly competent and energetic, and the undertaking was commonly made the bedrock on which partisans of public ownership based most of their arguments. Car fares in Glasgow were as cheap and possibly cheaper than anything to be found in the world; the cars were comfortable and clean, if perhaps not so commodious as some of those seen on this continent; the men were well paid and cared for; and the upkeep of the track was all that could be desired. The Tramways Department always paid its way and to spare, and the system was deemed a model of what a street railway should be.

THE Glasgow Corporation commenced to operate the tramways as a municipal undertaking in 1894 when the franchise to the Tramway Company then in possession expired. Ever a forward-looking body, the Glasgow town council had considered the possibility of operating the system electrically even at that early date, but the fact that they were forced to take over the cars at a stipulated date and had no access to the track for the necessary alterations until the expiration of the Tramway Company's franchise in June 1894, made it necessary to continue the operation of horse cars for some time after that date.

THE transfer from private to public ownership was not made without opposition. The Tramway Company strove to remain in possession by every means in its power, and resorted to all sorts of obstructive

tactics to achieve its end. Municipal elections were fought on the question, and, the civic spirit of the populace being roused, the result was an overwhelming victory for the advocates of municipal ownership. The company thereupon declined to sell its worn-out cars, its old horses, and its existing depots at reasonable figures, so the city built new depots, bought new cars and horses, and engaged and trained a new staff of men. The change-over was quite dramatic, the old order disappearing from the streets one day and the new one coming into operation the next. The defeated capitalists then tried running opposition omnibuses, but the wave of civic patriotism was such that these were soon driven from the streets and the citizens were victorious all along the line.

THE first experiment with electric traction was made in October 1898 when a 5-mile line to the suburb of Springburn was put into operation. The results of this were so satisfactory that it was decided to transform the whole system to electricity forthwith. The work was pushed on with characteristic energy, and by the spring of 1901 (the year of the famous Glasgow Exhibition), the transfer was practically complete. So popular was the new system and so well managed and patronized did it prove to be that the corporation was able to pay off its entire tramway debt out of earnings in less than twenty-five years, in marked contrast to the policy of inflation invariably followed by private ownership. When American cities issue bonds for public utilities or other purposes they have to make provision for paying them when due. Refunding is the rare exception.

THE fares in Glasgow are graded from 1 cent upwards according to distance travelled. The 1-cent fare was introduced when the horse cars were taken over in 1894 and proved deservedly popular. For this modest sum passengers were carried half a mile, a distance which was later increased to one mile.

In the year 1910, 30 per cent of the passengers carried travelled this short distance and contributed nearly 17 per cent of the receipts. The 2-cent fare, for which the passenger is carried $2\frac{1}{3}$ miles, was patronized by 61 per cent of the passengers and brought in $66\frac{1}{2}$ per cent of the receipts, so that of the total number carried in that year, something like 189,000,000 people, 91 per cent paid fares of 1 cent and 2 cents.

The service was then at what might be termed the height of its fame, and, as is apparent, the great bulk of the citizens made use of it for the shorter distances, unlike the services in most American towns which mulct the short-distance traveller to the benefit of the long.

Only 6.31 per cent of the passengers in Glasgow in 1910 paid 3-cent fares, 1.62 per cent paid 4 cents, and less than 1 per cent paid 5 cents or more.

THE service is managed by a committee of the city corporation which holds frequent meetings and reports regularly to the city council, which gives its sanction to the proposals put forward. It consists of 28 members who appoint subcommittees

The Moral of Glasgow's Experiment

"THE moral of Glasgow's example undoubtedly is that it is wise for the municipal owners of street cars (the fixed principle of which puts them at a disadvantage with vehicles capable of moving freely all over the street), to avail themselves of the opportunities opened up in the neighborhood of their cities for the employment of mechanically operated busses and such-like contrivances for public transport, and not wait for private individuals to step in and establish services likely to jeopardize the financial stability of expensive light railway and tramway systems."

for supervising the different departments. The general manager, however, is given wide powers, and he and his assistants are highly competent men chosen solely for experience and ability. The city borrows the necessary money for capital expenses from time to time at a low rate of interest for a period of thirty years, and the cautious policy of renewing the permanent way as far as possible out of revenue, depreciating heavily, and building up revenues in order to cut down capital expenses, has been largely responsible for the successful showing the Tramways Department has heretofore made.

Tramway profits in Glasgow are not applied to the relief of local taxation, but the Tramway Committee pays a mileage rate on the same basis as the old Tramway Company, and the money is put into what is known as the "Common Good Fund of the City," a general fund which can be applied to any purpose for increasing the amenities of the city and welfare of the people.

In the palmy days before the war something like $125,000 was paid annually by the Tramways Department into this fund, together with city taxes in the neighborhood of $175,000. By the time the whole system was converted to electricity the total capital incurred four or five years previously for equipping the horse system had been entirely extinguished. As a business proposition the corporation tramways seemed to be in an invulnerable position, and the department dreamt of changing over from the trolley to the conduit system out of accumulated reserves, and of establishing a universal 1-cent fare irrespective of distance travelled.

DURING the first decade of its inception the system maintained a steady growth and soon extended to neighboring towns. Renfrew, five miles distant, Paisley seven miles, and Dumbarton fifteen miles were all reached in turn and even passed, and presently so distant a place as Balloch, almost twenty miles out of the city proper, came within the sphere of operations of this enterprising light railway.

The suburban traffic of the steam lines was hard hit, and desperate measures in the way of fare reductions were made by some of the rail-

way companies. Others were content to let the suburban traffic go and concentrate on the long distance business. There were not wanting those critics who contended that a corporation street car service was going outside of its legitimate sphere of operations in thus invading the countryside. But the answer seemed to be that the demand was there. The cars were patronized and were apparently preferred by a considerable body of the local travelling public.

Then came the war with its soaring prices and its unsettling of everything stable.

IN the post-war period costs still kept mounting, and presently it was found that the 1-cent passengers, who were now getting a mile for their money, were being carried at a loss. The 1-cent fare was accordingly abolished, and 2 cents became the minimum charge. However some years later the 1-cent fare was restored for a time, then once more withdrawn, only to be reintroduced again in 1927 but for one-half the original distance. This arrangement is still in force at the present day, but the latest advices are that it is likely to be withdrawn for the third time in the near future, and possibly this will be the last of it.

It was hoped that when the bus competition became keen the restoration of the 1-cent fare would create a new public of short distance travellers, but it does not seem to have achieved this result, and under the new conditions it has proved difficult to work. The distance between stations is now so short that the conductors find it impossible to collect all the fares in the time at their disposal, especially during the rush hours or crowded periods.

So the 1-cent fare, once regarded as the triumph of municipal management, seems likely to be abandoned altogether in the near future.

WHAT hit the trams hardest was the advent on the streets of the private motor busses that appeared in shoals a few years ago and leaped at once into popular favor. What the horse omnibus failed to do in 1894 the motor omnibus achieved thirty years later, and put an end to the undisputed sway of the corporation cars on the city streets.

Thus does the fickle jade public preference run true to her reputation.

Why the civic spirit that carried everything before it in 1894 should have been dulled to the extent of allowing the people's pet project to be seriously threatened in 1927 is one of those problems that has to be left to the psychologist. Possibly the craze for novelty and speed had something to do with it. But whatever the cause the trouble was there and had to be met.

The busses were for the most part large, speedy, and comfortably equipped, and on account of their greater mobility were deemed a big improvement on the street cars, particularly for the longer runs. Within the confines of the city itself the cars held their own fairly well; but the long distance traffic languished. It began to be feared that much expensive trackway would become a loss to the corporation, and gloomy predictions were heard about the whole service. However, the management

fought gamely, the 1-cent fare was restored, a maximum fare of 4 cents established, the service improved where necessary, electric heating installed on the cars, and every effort made to regain the place the system had originally won on its merits in popular esteem. These measures were ultimately attended with a certain amount of success. After a time the novelty of the busses began to wear off and their disadvantages to become known, and a large body of traffic that had been weaned away temporarily returned once more to the trams which now appear to be holding their own reasonably well.

In the financial year 1926–27 the tramway receipts totaled upwards of $11,000,000, an advance of something like $7,500,000 from the receipts of 1910. Operating expenses however have increased in far greater proportion and now bear a much closer ratio to receipts than in the old days of cheap labor and supplies when working costs were only about one-half of revenue earned. Those conditions are possibly gone for ever.

The year 1926–27 showed an increase in receipts of $400,000 over the previous year, although the actual tickets sold were fewer by 5½ millions. Since the introduction of the 4-cent maximum fare, however, the revenue has steadily improved, indicating apparently that passengers are again being lured to the long distance runs.

But the motor omnibuses also appear to be prospering.

A feature in the case that is worthy of careful note is the complaint made by the tramway authorities that while they have to spend large sums not only on the tramway tracks themselves but also on the roads on which they run, no such charges are borne by the owners of the motor vehicles with whom they now have to compete.

The moral of Glasgow's example undoubtedly is that it is wise for the municipal owners of street cars (the fixed principle of which puts them at a disadvantage with vehicles capable of moving freely all over the street), to avail themselves of the opportunities opened up in the neighborhood of their cities for the employment of mechanically operated busses and suchlike contrivances for public transport, and not wait for private individuals to step in and establish services likely to jeopardize the financial stability of expensive light railway and tramway systems.

This has been well illustrated in the city of Montreal, Canada, where the street cars are operated by a private company under a franchise from the city council. Profiting possibly by the example of the Glasgow Corporation the Montreal Tramways Company secured the rights for the running of motor busses on the Montreal streets a few years ago, and there is now a very complete service of these vehicles all over the city running hand-in-glove with the street cars and turning their earnings into the same coffers.

There does not appear to be any valid reason why the Glasgow Corporation could not have done the same thing, and the policy that led them to allow such opportunities to go a begging has cost them dear and must have been bitterly regretted by those responsible.

Ten Years of Electric Light and Power Mergers

The period of consolidations of many small utility corporations is declining; are we now facing a period of consolidations of the consolidations?

By WILLARD L. THORP

PROFESSOR OF ECONOMICS, AMHERST COLLEGE;
RESEARCH STAFF, NATIONAL BUREAU OF ECONOMIC RESEARCH, INC.

One of the outstanding characteristics of the post-war period has been the widespread tendency toward increased concentration of industry, brought about through merger and purchase.

The phenomenon is not new. In the years at the beginning of the century, there were numerous industrial combinations formed in various manufacturing lines. Many of our largest concerns today are products of that period. They were usually attempts to consolidate entire industries, and in many instances did succeed in obtaining at least temporary control of the market. But the movement at that time was almost entirely limited to the manufacturing industries.

The present development is quite otherwise. The "merger movement" crops out everywhere. Hotels are now included in chains. Department stores are consolidated. The motion picture producers control distributors who in turn control over one-third of the motion picture theatres in the country. More than one-half the grocery sales in some cities are done by stores which belong to large selling organizations. And every morning newspaper brings news of some proposed or consummated merger among manufacturing concerns.

In the midst of this great activity, the electric light and power industry has held first place.

Not only has the trend towards consolidation been marked, but it has undoubtedly received more attention in the press than have similar developments in other fields. It has been discussed in magazines and at public meetings. And to assure it of permanent record, there have been two different investigations ordered by the Senate of the United States.

But there is justification for this publicity. The merger movement in the electric light and power industry is unquestionably a more significant tendency than in many other fields. For this industry has come to be recognized, legally and popularly, as having particular importance to the public welfare. The usual principle of *laissez-faire* has been discarded.

and Government regulation substituted for it.

The tendency toward concentration is going on quite beyond the sphere of regulation but with many important implications concerning the nature and effectiveness of such regulation in the future.

In connection with the "Report on Recent Economic Changes," prepared by the National Bureau of Economic Research, Incorporated, for a Special Committee of the President's Conference on Unemployment, the author had occasion to study the trend of consolidation in the electric light and power field over the last ten years. A tabulation of mergers and purchases was made from the files of the *Electrical World*. This trade journal collects and publishes news concerning the industry. For the last four years it has published annually in an early issue a list of the mergers and acquisitions of the previous year. Information was drawn from these annual tabulations for the recent years. Prior to that time, the various weekly issues were combed for information concerning the disappearance of companies through their merging or being acquired by other companies.

THIS tabulation includes all reported cases where companies actually lost their autonomy, being taken over by some new concern created for the purpose, or being acquired by an already existing concern. Instances of stock purchase control not made public, interlocking directorates, and arrangements for interconnection are not included. The data are by quarters, each disappearance being included in the quarter in which it was reported in the *Electrical World*. On the accompanying chart, (FIGURE 1), the light line is the actual quarterly data. The heavy line is an average line, indicating more clearly the general trend of the data. The results of the study are given on this chart.

As can be seen, the movement grew rapidly until 1926, when the peak was reached. Since that time, the number has slowly decreased. The annual totals are:

1919	22
1920	15
1921	74
1922	285
1923	426
1924	580
1925	402
1926	1029
1927	911
1928	745

During the 10-year period, 4,489 concerns disappeared from independent operation through merger or purchase.

IT is interesting that the movement among power companies should have been so quiescent in 1919 and 1920. For 1920 was a banner year in consolidation of industrial concerns. To be sure, there were numerous arrangements for interconnection made at this time, but they can hardly be considered in the same class with actual mergers.

The year 1921 saw the real beginning of the recent consolidation movement in the electric light and power field. It was a year of severe depression. Mergers among industrial concerns were greatly reduced, and only began to recover from the effects of the depression by 1924. But these years saw rapid growth in

MERGERS IN THE ELECTRIC LIGHT AND POWER INDUSTRY

FIGURE 1: *This graph shows the trend in acquisitions and mergers during the period 1919 to 1928. The light line shows the actual quarterly data; the heavy line shows the four-quarter moving average.*

consolidations among power companies. In fact, they constitute the great part of the merger movement in this period.

But the rapidly rising curve was suddenly checked. The last quarter of 1924 and the entire year of 1925 record a recession in the trend towards concentration. As a first explanation, there was a brief business recession in 1924. The index of industrial production had dropped by the middle of the year from its peak of 107 in the previous year to 83, and the index of employment had fallen from 105 to 85. This affected the production of electric power, which, by quarters, was as follows (U. S. Geological Survey):

		Millions of kilowatt-hours
1923	IV	13,569
1924	I	13,746
	II	12,986
	III	13,092
	IV	14,624
1925	I	14,684

THE second and third quarters of 1924 show clearly the effect of the recession. Certainly this de-

cline must have had some influence, but it cannot be given entire blame for the slackening of the merger movement which continued throughout 1925. The 1924 recession had some effect on industrial mergers, but although the industrial recession was more severe than that in the power industry, the recovery in the merger trend was prompt, and 1925 was 50 per cent higher in terms of firms involved than 1924. The explanation of this prolonged recession in the consolidation movement in the electric light and power industry is probably to be found in the influence of the first Senate investigation. Originally intended as an inquiry into the General Electric Company, it extended to cover the "organization, control, and ownership of commercial electric power companies."

The Senate Resolution was approved February 9, 1925, and the investigation was begun at once by the Federal Trade Commission. In the face of this rather indefinite and undefined investigation, companies having merger plans doubtless delayed until they could be certain of the attitude of the Government on such matters.

IN contrast to 1925, the year 1926 recorded extraordinary activity in the merger field. More than one thousand public utility companies disappeared via merger or purchase. Industrial mergers also increased, but not to the degree of public utilities. In fact, in 1926, more electric light and power companies lost their independence than in all fields of manufacturing.

But from 1926 on, the two types of economic activity part company. The merger movement in the industrial field is still growing in extent, but the power companies have passed their peak. The record for 1927 is under that for 1926, and 1928 shows even further decline.

THIS decline cannot be laid at the door of business conditions. Since the recession in 1924, the electric power production record has continued to advance. The figures for 1928 represent a power output record for all time. But there has been another Senate investigation, and that may once more aid in explaining a slackening of the merger movement. Senator Walsh introduced a resolution ordering a new investigation of public utility companies on February 26, 1927. No action was taken until Congress met late in the year. After some delay occasioned by a quarrel over who should conduct the investigation, the final resolution directing the Federal Trade Commission to undertake the study was approved February 15, 1928. As before, the rather indefinite nature of the investigation could not help but have a retarding effect upon the merger movement.

BUT there is another possible explanation for the apparent decline in mergers in the electric light and power field—the increasing scarcity of raw material for such consolidations.

As the industry becomes concentrated in fewer and fewer hands, the number of possible mergers grows continually smaller. In 1926, for example, 201 plants operating under municipal ownership were taken over

by private companies. In 1927, but 182 municipalities sold their plants to private concerns. This does not necessarily represent a decline in interest or eagerness of municipalities to sell, but every plant sold in 1926 reduced the number left which might be sold in later years.

One indicator, though somewhat faulty, of the number of concerns in the industry, is income tax returns. These are somewhat misleading since many concerns continuing to operate as subsidiary corporations file separate returns. The record for alternate years is as follows (Statistics of Income. U. S. Bureau of Internal Revenue):

Year	*Number of concerns reporting*	*Number of concerns reporting with net income*
1918	1,566	1,086
1920	1,687	1,141
1922	2,072	1,613
1924	1,973	1,532
1926	1,839	1,276

It is evident that the number of electric light and power companies increased with the growth of the industry until 1922. Since then, the tendency toward consolidation has more than offset the new companies formed to supply new areas. Since 1922, the gross income and net income for these companies have steadily increased, but the number of corporations has decreased. Unfortunately, data are not yet available for years since 1926, but they doubtless will show an even greater decline in the number of corporations reporting.

THE period of large numbers of utility mergers is, therefore, gradually drawing to a close. Most of the small independents who were willing, or could be persuaded to join larger enterprises have been swallowed up. The situation consequently takes on a somewhat different aspect. It is becoming less and less a matter of the larger companies absorbing small concerns here and there. Small concerns eligible for such absorption have already mostly disappeared. Of increasing importance will become the combining of these already large concerns into still larger. The swallowing up of the small company was usually justified in terms of technical advantage and cheaper and more efficient production.

In the new type of consolidation, the advantages are primarily in the realm of finance. Whether these advantages will be sufficient to continue the trend towards concentration at the pace of the last few years, no one can possibly prophesy.

IN a public utility business, it should be recognized as a basic fact that the public is the employer who hires capital and labor to perform an essential service to the community; and further, that in return for a monopoly of such service, the public reserves to itself the right to specify the wages to be paid to both capital and labor, under the promise that the wages paid to each shall be fair.

—SAMUEL FERGUSON.

What "Minimum Charge" Means

The practical, economic reasons for a cost item that so few customers understand and so many resent

By RICHARD LORD

MR. and Mrs. Waterbuy had just returned to their home after an absence of three months. They were engaged in the necessary but irritating occupation of looking over a batch of bills which the postman had shoved under the front door from time to time during their absence. Mr. Waterbuy gradually accumulated a scowl.

"Of all the nerve," he exclaimed, "look at this one from the water company. Here we have been away for three months, with the water turned off, and get a bill for $1.50, marked 'minimum charge.'"

"I should think as much," exclaimed Mrs. Waterbuy. "As if they do not charge us enough for what we get. Here they are trying to make us pay for something we have never had."

"I will not stand for it," declared Mr. Waterbuy. "I'll take it up with the company."

THIS conversation took place back in the days when the companies were just beginning to adopt what they called the minimum charge. The minimum charge is a charge customers are expected to pay whether they use any water or not. Mr. Waterbuy had never paid a minimum charge before; so he called at the main office of the company to have it out with the manager.

"What does this minimum charge mean?" he demanded. "I can prove that the water was turned off while we were away. Why should I pay for something I did not get?"

That is a question thousands of public utility customers have asked. The idea that they were charged for something they did not get resulted in great popular opposition to the minimum charge when it was first made. It occasionally causes discussion today.

The minimum charge was not adopted to make customers pay for service they never receive; but for service actually rendered. The usual explanation of the charge is that it is to cover costs which the customer causes whether he uses any service or not—the cost of maintaining his meter and billing, for example. The correct explanation is that its purpose is to make consumers pay for the cost of service actually received.

It is not, for example, the water alone which a customer of a water company pays for. Water is really free where it lies, as free as the rain which falls from the skies. What the company does is to go to the water, gather it up, and fetch it to the customer's house. When a person

becomes a customer of a water company he puts in a standing order to the company to bring water to his house whenever he calls for it. The company has to hold itself ready to perform this service when the customer needs it. This cannot be done without expense. Help must be employed and a system of delivery maintained. It costs something to install the pipes and the meter, and something more to keep the account whether the customer uses much or little water. Each customer receives a benefit or service which consists of the opportunity to have water brought into his house whenever he turns a faucet.

It is like the fee one pays for membership in an automobile club that renders road service. Paying the fee entitles the car owner to call on the club for a tow if his car breaks down on the road, for the change of a tire, for minor repairs and so on. None of these misfortunes may happen; but the club has to provide the means of fulfilling its obligation to its members in this respect. It is the cost of available service which the member pays for whether he uses it or not. Every new member adds a potential demand for that service. It cannot be said that a club member who never meets with a mishap on the road gets nothing for his money. He gets protection—the right at all times to call on the club for help.

So, when a water or gas consumer pays for the cost of having water furnished whenever he wants it, he is manifestly paying for a real privilege. The main object of the minimum charge is to obtain from each customer an amount approximating what it costs the company to render him this valuable service, irrespective of the amount of water or gas or anything else he uses. It is only a rough way of estimating the charge for this special service; but to fail to make any charge whatsoever, would be to render a valuable and costly service for nothing. Whatever service is rendered to one customer free or at less than cost, the cost must be made up by overcharging other customers. The minimum charge is, therefore, a charge for the protection of consumers. It prevents one class of consumers from getting a valuable service at the expense of others. It is not a charge for something the customer does not get, but it is a charge for a privilege or service that he actually receives.

What American Railways Do In One Hour—

They take aboard 94,473 passengers:
They load 5,903 cars with revenue freight:
They carry an equivalent of 3,841,106 passengers one mile:
They haul an equivalent of 48,929,387 tons of freight one mile:
They earn $700,491 from their transportation operations:
They spend $522,166 in operating expenses:
They pay $332,102 in wages:
They pay $42,935 in taxes to national, state, and local governments.

(These figures are based upon the 1927 operations)

PUBLIC UTILITIES FORTNIGHTLY
MUNSEY BUILDING ✣ WASHINGTON, D. C.

July 11, 1929.

Dear Sir:

Not long ago we went with a friend to see some whippet races. We did not know that whippet racing attracted so many persons, but we understand dog racing is becoming a very popular sport.

On the assumption that you may not know how these races are managed perhaps we ought to say that an electric rabbit is made to travel around the race track at just the right speed. The dogs see this object and chase it. Probably they think it is a real rabbit. That is what makes the race.

Before one of the races our friend invited us to go down under the grandstand where the dogs were exhibited.

"Let's look them over," he said, "and see if we can pick the winner."

It seems that a good many persons attending these races examine the dogs for this purpose and think enough of their judgment to bet on it.

Well, we inspected the dogs. They were a fine lot of canines. Some were barking and yelping, evidently full of ginger. Two were pawing their attendants. Others were walking nervously back and forth in a high state of excitement or anticipation, apparently straining to go.

One of the dogs, however, which attracted little attention was lying quietly on the floor, his nose across his paws, his eyes closed.

Not knowing much about dogs but having some knowledge of humans, we looked that dog over very carefully. Some one asked if the dog did not know a race was on. We thought he knew very well what was expected of him and that he was acting accordingly.

We are not saying we did any betting. We are not commenting on that one way or the other; but we looked the dogs over and we noticed the one that was lying down.

Finally we returned to the stand. Soon the signal was given. The rabbit started on its jerky, jumping course around the track and the dogs released at the proper moment took hot foot after it. The race was over before you could say Jack Robinson with your mouth open, as the expression was in our boyhood days.

Believe it or not, the dog which did no barking, which wasted no energy in fussing about with useless motions, and which was not eager to be off until the proper time, came in first. He was apparently asleep before the race but out on the track he was wide awake.

We do not know whether it is the rule that barking dogs win no races, but we are sure that is generally true of their masters. The loudest barkers are usually the poorest producers. The constructive work of the world is done by men who make the least noise and the fewest gestures.

The barkers and the yelpers attract a great deal of attention at times, but a betting man wise in the game after looking them over would lay his money on the more quiet kind.

We suspect that the average man has sense enough to know the difference between barkers and winners; and that the barkers do not have as large a following as they think they have.

Very truly yours,

Henry C. Spurr

HCS:FR

The Proposed New "Communications Commission"

Congress is now mulling over a plan for creating a new regulatory body that will enable Uncle Sam to exercise still stricter control of all of our telephone, telegraph, cable, and radio utilities.

By JOHN T. LAMBERT

WHEN it gets big enough, regulate it. Acting in the spirit of the above slogan—which is, in fact, more of a slogan than an intellectual dogma to the average Congressman—the Seventy-first Congress is approaching the day when it will throw a new and powerful arm of regulation around the diverse corporations engaged in the transmission of intelligence by wire or wireless.

Telephone, telegraph, radio, telephoto, television, all the systems and methods now established or yet to be created by the inventive brain of the American engineer for drafting the ether into the service of mankind, will be included in the gamut of the proposed regulation.

It is but eighty years, I think, since telegraphy was invented. Morse made it of practical value within the memory of the elder members of this generation, while Bell produced the practicalities of the telephone well within the memory of those veteran warriors who still don the Blue on each succeeding Memorial day.

We have it from the historians of the engineering world that the prophecy of radio was made by a celebrated Scotch mathematician no earlier than 1873, and it actually was fourteen years later that Hertz, the German physicist, discovered the radio waves in his laboratory. Marconi was but one year in excess of his majority, in 1896, when he sought to prevail upon the English to convert with him the radio waves into an agency of serviceability, and the present century had turned when he succeeded in sending his memorable SOS across the Atlantic. Water-power electricity, like radio, is yet in its infancy; it is still a toddling child, full of the promise of industrial successes of a magnitude never before attained on earth.

THE growth of these agencies, measured by the yardstick of the dollar, is one of modern life's most imposing wonders. It has been estimated that seventeen billions of dollars have been invested already in this country in the public service utilities of which electrical power is both the backbone and the chief impulse. A single radio corporation, gathering financial sustenance from associated

electrical firms, is understood now to have money sinews exceeding five billions. The telephone and telegraph companies, providing a service without which modern life would be hollow, are among the most impressive organizations of the capitalistic world.

Naturally, as they grew the demands for "regulation" of them maintained a corresponding growth. Nationally some forms of regulation have been established. A power of regulation like unto the power possessed by the Interstate Commerce Commission over the railroads was given to that body over the telephone and telegraph companies. Authority to regulate the rates and service of interstate business was vested in it. The Federal Radio Commission was established to supervise the radio and was equipped with authority to grant licenses, assign wave lengths, and, by influence at least, to counsel even the programs of the air. In the Federal Power Commission was lodged a certain authority over those corporations which are permitted to produce energy from the Government's water-power sites.

THOSE businesses grew apace, and so did the demand for more concentrated and extensive regulation. At least, the demand has grown in Congress. With the result that there is pending before the Senate Committee on Interstate Commerce of the Seventy-First Congress Senate 6 a bill "to provide for the regulation of intelligence by wire or wireless." This bill contains forty-seven sections and consumes seventy-two printed pages, one page for every Congress that has convened, and one thrown in for good measure. Additionally there is an elongated amendment proposing to add two new sections to the bill and consuming eight more pages of printing.

To narrate the technical contents of this broad bill would require more space than is available and would overreach the purpose of this article. Suffice it to say that the scheme of this proposed regulation is to lodge all the existing authority of regulation over the agencies which transmit intelligence by wire or wireless in a new National Commission at Washington, and to legislate all the new powers of regulation deemed by the solons to be required by the vast expansion of the art.

FOR example, all the authority over telephony and telegraphy now possessed by the Interstate Commerce Commission would be transferred to the new "Commission on Communications and Power." The Commission would consist of five members, salaried at $10,000 a year, each selected from one of five zones designated in the bill. The President would appoint them, and the Senate confirm or reject them.

The tremendous scope of the proposed legislation may be adduced from from one or two verbatim extracts, as follows:

> "The provisions of this act shall apply to all common carriers engaged in the transmission of intelligence by wire or wireless but shall not apply to the transmission of intelligence by wire or wireless wholly within one state.
>
> "This act is intended to regulate all forms of interstate and foreign radio transmissions and communications within the United States, its

Among Other Regulatory Measures—

"This act is intended to regulate all forms of interstate and foreign radio transmissions and communications within the United States, its territories and possessions; to maintain the control of the United States over all channels of interstate and foreign trade transmission; and to provide for the use of such channels, but not the ownership thereof, by individuals, firms, or corporations, for limited periods of time, under licenses granted by Federal authority."

territories and possessions; to maintain the control of the United States over all channels of interstate and foreign trade transmission; and to provide for the use of such channels, but not the ownership thereof, by individuals, firms, or corporations, for limited periods of time, under licenses granted by Federal authority."

HAVING declared that all common carriers which transmit intelligence by wire or wireless come within the purview of the proposed legislation, it then declares:

"All charges made for any service rendered or to be rendered by such common carriers as aforesaid, or in connection therewith, shall be just and reasonable and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Following sections contain the authority of the new Commission, upon complaint or by its own initiative, to investigate the reasonableness of rates and service and to enter orders affixing their final prices.

What of the demands for the creation of this new regulatory body? What is their genesis? By whom are they made? Why the need of a change when there is now ample authority to pry into and determine the business affairs of these corporations?

The demand seems to come principally from within the Congress. Supplementing the Congressional anxiety for regulation are some independent radio manufacturers and distributors. The principal theme is that authority over an industry which is basically electrical should be centralized instead of being scattered among numerous Washington bureaus and departments. More intelligent as well as more effective regulation would be a logical result if the overlapping functions of the industry were supervised by one body supposedly familiar with the industry as a whole, according to the argument.

REGULATION of the telephone and telegraph companies by the Interstate Commerce Commission is said to be as much of a myth as Coolidge's reticence on occasion. Only six or seven telephone rate cases have been brought to the Commission and all of them are understood to have been settled by adjustment before any necessity for a final decision by the Commission was predominant. Phone rates are small, it is said, and the average customer would not spend the time and money to run down to Washington to complain that he had been overcharged a half-dollar on a

long-distance call between New York and Chicago. The Commission is loaded to the guards with railroad work anyway. One Commissioner is said to have been surprised when recently informed that the Interstate Commerce Commission Act equipped the Commission with jurisdiction over telephone rates and service. It is proposed, as above noted, that the new Commission would investigate unreasonable conditions upon its own motion and thus save the consumer costs and burdens which are excessive under present conditions.

LITTLE or no inquiry into telegraph rates and services has been made by the State Commissions, it is contended, and, in any event, most of that business is interstate and should be scrutinized by National authority. The business relationships between the corporations which supply telephone service and those which furnish the equipment require Federal examination, it is asserted.

The radio art is developing to such an astounding extent that the existing law can not keep pace with the changes, according to the advocates of sterner regulation. Accordingly, they urge, a greater latitude of regulation should be vested in a new agency. Others point out that the Radio Commission will cease to exist, except as an appeal board, and its present functions will automatically be returned to the Secretary of Commerce next year unless new enabling legislation is enacted. The right to parcel out wave lengths with a potential value of millions of dollars is too dangerous and tempting to be granted any individual, it is argued.

THERE is pending litigation on the basic patents of radio which may cause existing practices and ownerships to crumple like a house of cards. Control of the basic patents now enables their holders to extort unfair fees and obligations from manufacturers and distributors of the radio instruments, according to allegations, and, it is further claimed, a temporary commission has not the expectancy of time available to probe that particular situation.

A SUPPLEMENTAL but nevertheless important statement in behalf of a permanent regulatory body is that water-power electricity will become an increasingly substantial interstate business, and that Congress should anticipate the necessity of regulation of it in the future.

The many corporations involved seem not to oppose the theory of regulation. Possibly they will center their efforts against some of the more stringent phases of regulation contemplated by the new bill which is under consideration.

The purpose of this article, it may be said, is to convey an estimate of the outcome of the proposed regulatory message. That estimate is that the Senate Committee will continue during the Summer and possibly the early Fall months with protracted hearings upon it, and that it will finally vote to report favorably a regulatory measure containing all the essentials of the existing temporary draft. That bill probably will be offered to the Senate during the coming Fall and Winter session. What will happen thereafter is merely as a shot in the dark.

The Youthful Native Chairman of the Porto Rico Commission

What the 37-year old, university-trained MIGUEL A. MUÑOZ *is doing as the head of one of the two of Uncle Sam's Public Service Commissions located outside of the United States.*

THE Public Service Commission of Porto Rico came into existence by virtue of an Act of Congress commonly known as the "Jones Act," approved on March 2, 1917.

This Commission as then constituted was composed of nine members, seven of whom were heads of departments of the Insular Government, whose time was continuously encroached upon by the numerous and continuously increasing activities of the Commission. The two remaining members were elected by popular vote.

This organization was found to be cumbersome and the reorganization of this body was recommended to Congress, which on March 4, 1927, amended the Organic Act, reorganizing the Public Service Commission which was then to consist of a Public Service Commissioner, to be president thereof, and two associate Commissioners, all of whom were to be appointed by the Governor with the advice and consent of the Insular Senate. The elective members of the Commission were to continue in office until the expiration of their terms.

In conformity with this disposition of Congress, Mr. Miguel A. Muñoz, who was then serving as Judge of the District Court of San Juan, was appointed President and Mr. Filipo L. de Hostos and Ricardo Narváez, were appointed associate Commissioners.

THE achievements of the Commission after its reorganization have fully justified the action of Congress. The number of cases disposed of by the new Commission is five times larger than what it was before. During the past year practically all electric lighting rates in the seventy-seven municipalities of the island have been revised, and besides there have been held 106 hearings, during the year. There has been a total of 719 cases decided and 250 orders have been issued.

In speaking of the general electrical development of the island, in his annual report, Mr. Muñoz reported as follows:

> "The United States of America today, as a nation, uses more electricity than the whole world combined, and the growth of the use of this commodity continues to increase at an

Drawing by
Abell Sturges

"Why should we wait ten, fifteen, or twenty years for the Insular Government to develop hydroelectric power, when there is such a crying need for its immediate use by the people of this island?"

—MIGUEL A. MUÑOZ
PRESIDENT OF THE PUBLIC SERVICE
COMMISSION OF PORTO RICO

enormous pace. It is a very pleasing thing for us to realize that proportionately we are keeping step with the United States in the development of electric power.

"Since 1912 to the present date, the amount of electricity consumed in the United States has multiplied itself six times. In Porto Rico, in 1912, we were consuming approximately 11,000,000 kilowatt hours; in 1927, the consumption estimated by our experts was approximately between 62,000,000 and 63,000,000 kilowatt hours. So, our increase in the use of electricity is a little more than five and a half times what it was in 1912.

"The figures, so far as municipalities and towns in the states, are concerned, are as follows: Every city with 5,000 population or more has electric service, and so have we in Porto Rico; 97 per cent of all the communities between 1,000 and 5,000

population have this kind of service in the states; in Porto Rico, 100 per cent of all such communities do have electric service. Fifty per cent of all communities between 250 and 1,000 population have electric service in the states; in Porto Rico, there is only one of such communities that does not have electric service—Las Marías—but it has a project for a hydroelectric plant, pending the obtainment of the necessary funds for its construction.

"We hope that through the development of the electric power of the island it may be possible to furnish electric service to all people alike, to the farmer as well as to those that live in the towns. We hope to see the electric lines aggressively extended over all the territory of the island, furnishing motive power for industries whose absence from our land has been very much felt."

IN speaking of the reasons why franchises for the immediate development of the hydroelectrical sources of power of the island should be granted with immediate effect, instead of waiting for the government development, Mr. Muñoz observed:

"We believe that the people at large have the right to receive the benefits to be derived from the development of this source of electric power. If we are able and capable of increasing the output of electricity, there is no question but that it will reflect advantages on the consumer, simply because a larger production would necessarily bring about a reduction in the cost of electricity in most cases. And besides, we believe that since we have no coal, we should make the utmost use of our sources of hydroelectric power, and that this use should be made now. It is almost impossible for me to conceive why we should wait ten, fifteen, or twenty years for the Insular Government to develop this source of power supply, when there is such a crying need for its immediate use by the people of this island. Unless we adopt such an attitude, our island will remain at a standstill economically and we have such an excess of population and such a great need for the industrialization of this island, that everything done to retard it, will do the island great harm."

MR. Muñoz record as a public officer has been a varied one. He is a graduate of Keystone Academy, Factoryville, Pennsylvania, attended Brown University from 1909 to 1910, and received his L.L.D. degree from Cornell University in 1913.

While in school Mr. Muñoz was prominent in public speaking contests and in athletics. At Cornell he was a member of the intercollegiate debating team, and he also rowed on the Cornell Junior varsity crew in 1913, which holds the world's record for the Henley distance on the Schuylkill at Philadelphia. Besides he also rowed on his college crew for the two preceding years and played foot ball on his high school team and freshman year at Brown University.

During the war Mr. Muñoz held the rank of captain, of infantry; he is now the ranking major in the Porto Rico National Guard.

He is thirty-seven years old and has held the following positions: private secretary to the Governor of Porto Rico; law clerk, office of the Attorney General; special prosecuting attorney-at-large for the island of Porto Rico; first assistant Attorney General of Porto Rico; judge, District Court of San Juan; chairman, Public Service Commission, and technical adviser, Havana Pan-American Conference.

"No Special Privilege"

Why the State Commissions forbid the utility companies to make exceptions in granting the discount rate on payments of bills

By DAVID LAY

If you have ever travelled much on the railroad you know that in the smoking car compartment, many weighty questions are discussed and popular economic problems solved. No introductions are required. The conversational gates are hoisted without formality. A Pullman coach is not a private car. The smoking chamber is democratic. It is no place for peaceful undisturbed reflection. Someone is sure to start something.

A little while ago two men drifted into one of these compartments and very soon the talk began. Before long it appeared that one of the men was nursing a grudge against a public utility company. He had let a bill run a day or two over the time allowed for a discount for prompt payment, and the company had refused to allow the discount.

"I call that a mighty shabby trick," he said to the other man.

"I have always paid my bill in time for the discount," he continued, "I have done it for years." The president of the company is a neighbor and friend of mine, too. I called him up and asked him what he meant by treating a friend and old customer like that."

The other man appeared interested. "What did your friend the president say?" he asked.

"Why," continued the first speaker, "he took the trouble to come over to see me about it. He tried to get around it by telling me the company could not help itself. He said the Public Service Commission would not let the company make any exceptions. We were good friends, as I said, and so I just gave him the ha! ha! I said, 'Joe, we will not argue about it. You know my position. It's a small matter to quarrel about so we won't talk about it at all. Just the same, I think it is a pretty small piece of business.' "

"Did he allow you the discount?" asked the other man.

"No, he stuck to his statement that he couldn't do it. I could have shifted to another company if there had been one; but there is only one company so I was helpless. That's the trouble with these utility companies; they have a monopoly. We have to take what we can get. There is no chance for the consumer."

The man to whom this conversation was addressed was silent for a moment as if hesitating how to reply. Finally he said:

"Perhaps you will pardon me if I refer to a personal incident which

may indicate how the utility company feels about this discount business. I happen to be in the coal business myself. We give a 2 per cent discount if a bill is paid within thirty days. We had a very good customer who always took the discount. One month the account ran ten days over the time allowed for payment with discount. He sent us a check as usual, deducting the discount. This did not amount to very much either to him or to us; but we sent the check back telling him we could not allow the discount."

"I don't see why you did that," said the man who began the conversation. "If it didn't amount to much, why send the check back? The delayed payment was probably just an oversight. Did the customer kick?"

"Yes," replied the coal man; "he not only kicked but he quit us. We couldn't make him see the point."

"Well, I don't see the point either," said the utility customer.

"The point was," continued the coal man, "we couldn't adopt a rule like that without sticking to it in all cases. Our customer put us in a bad position. If we offended him we would be likely to lose his trade. We knew that. If we made an exception in his case and any of our other customers heard of it, we might lose their trade. They could well say: 'If you make an exception in his case, why not in ours?' And they would be right. So we stuck to the rule for the sake of what we thought to be fair treatment to all of our customers. We lost this man's trade for a time, but he finally came back. He evidently saw our side of the matter after he had had a good chance to cool off."

"All of which," replied the utility customer, "tends to put me in wrong in my case against the utility company."

"I'm not saying anything about that," said the coal man, "I'm just telling you the way we look at it in our business. I'm not asserting we are right; but I think there is something to be said in favor of sticking to a discount rule if you have one."

Whether the coal man was right or wrong so far as his own business was concerned need not be considered. There is little chance for argument, however, as to what course a public utility company must take.

In the first place, rules as to discount for prompt payment of bills, or penalties for nonpayment are usually part of the rate schedules filed with the Commissions. The utility companies are not allowed to depart from those schedules. To charge less in some instances than the rates on file or to allow a discount where customers are not entitled to it under the rule, or to remit a penalty would make the company guilty of an unlawful discrimination. The elimination of discriminatory practice is one of the main objects of our regulatory laws.

The rules adopted to secure the prompt payment of bills were adopted for the benefit of ratepayers in general. These rules tend to reduce rates by reducing losses incident to the collection of over-due bills. The strict application of the rule may appear to work a hardship in some cases, but the rule is beneficial to the ratepayers. It is fair if it is rigidly enforced. It is unfair if one customer is held to the rule and another customer let off.

OUT OF THE MAIL BAG

Two Sides of the Regulation Problem—as Seen by a Couple of Goats

In passing through Trenton, New Jersey, the other day, on a train bound for New York, I saw two goats on the passenger platform. Each was in crate, with wide slats, so that the goats could see out. One goat faced east; the other west. Their heads and tails were side by side.

What one goat didn't see, the other did. And as trains were constantly passing on east and west bound tracks, there were two busy goats!

Yet, they were grossly ignorant, these goats, because each could see only half the picture. Either goat would probably have insisted that he knew all. His crowded brain was full. Certainly there could be no more in his great world than what he saw!

And he saw only half!

It reminded me of politics and industry, of Senate investigations, public utility problems, and big business. If these goats could only be led into a green pasture, and freed from their crates, tell what each knows, how great an understanding there might be!

—A. S. H.
Washington, D. C.

The South Carolina Commission Regulates Power Company Rates

On page 577 of Public Utilities Fortnightly of May 16th, 1929, Richard Lord states that the Railroad Commission of South Carolina does not have jurisdiction over the rates of power companies.

This is incorrect.

By referring to the 1922 Acts of South Carolina, 32nd Stats., page 938, you will see that the Railroad Commission of South Carolina is given full jurisdiction over rates and services of every public utility in the state.

—W. C. McLain,
Columbia, S. C.

Lively Arguments Usually Attract Attention

May I congratulate you upon the recent publication of the interesting contributions by Prof. Harry Gunnison Brown and Dr. John Bauer. These articles, presenting opposing views on the important economic subject of costs, are directly in line with the editorial policy which I had hoped you would carry out.

—Ben W. Lewis,
Department of Economics, Oberlin College, Oberlin, Ohio.

The Growing Responsibilities of the Power Companies in Solving the Farm Relief Problem

It is my opinion, based on years of observation, that there exists a rural psychology sufficiently distinct to warrant special attention on the part of departments of public relations of our public utility companies that are desirous of establishing and maintaining contacts in rural communities. An analysis of a rural community is of course essentially an analysis of the characteristics of the man engaged in agriculture, and today it is the farmer who is worthy of specific consideration in the scheme of public relations. This is particularly true in the field of public utilities that are supplying electric power for agricultural purposes.

Operating his farm in the vast majority of cases as an individual unit, the farmer has not kept pace with industrial progress. As a result, there has been created an agricultural state of mind that is susceptible to any appeal that seems to promise alleviation. That the demagogue and the political climber is taking advantage of this situation is an established fact; to combat this condition a program of more than educational activity on the part of the public utility companies is essential. And to be successful, such a program must entail more than the mere compilation of data and the presentation of statistics that confirm the mere statement that electric power is economical, and of

great advantage to the consumer. The program must go further; it must take into consideration the human equation in its relation to personal contacts.

In spite of the swiftly moving current of modern times, which has brought the automobile, the radio, the rural telephone system, excellent rural highways, and other developments which tend to reduce the factor of isolation, the farmer's trend of thought is instinctively introspective and susceptible to impressions formed by direct personal contacts. It, therefore, follows that not only should personal contacts with the farmer be established and maintained but that judicious selection be exercised in appointing a personel for this important activity.

Frequent personal calls on the farmer by a representative of the public utility company, who has an appreciation of the responsibility he assumes, and who is versed not only in the "talking points" of electric service on the farm, but who has, over and above that knowledge, a personality that reflects favorably the organization which he represents, is the proper procedure to register a favorable impression on an existing agricultural consciousness.

—Hugo E. Jung
Kerman, Calif.

The Amount of Electric Power Exported from South Carolina

On page 449 of the April 18th issue of Public Utilities Fortnightly, Mr. O. C. Merrill, Executive Secretary of the Federal Power Commission, commented on the amount of power exported from South Carolina. I inquired of the author the basis of his statement; in his reply Mr. Merrill sent me a photostat reproduction of Table 2, from Bulletin No. 63, of the Bureau of Business Research of Harvard University, with the following observation:

"It will be noted that this table shows for South Carolina the generated and exported power as 1,023,076,000 and 318,670,000 kilowatt hours, respectively. Based on these figures approximately 31 per cent of the power generated is exported from the state.

"Following is an abstract from page 2 of that bulletin to which reference is made in the footnote of table 2:

'The foregoing figures on interstate transmission of power in 1926 were obtained chiefly by means of questionnaires. On these questionnaires each company reported not only the interstate power which it sold in 1926, but also the quantity of interstate power which it bought. Thus a double check was obtained on the accuracy of the figures. In all, 374 reports were obtained, 211 of which showed interstate transfers of power. This figure does not represent the number of companies engaged in interstate transmission of power, for, in many instances, holding companies and even operating companies submitted reports on the interstate business of their subsidiaries.'"

For the interest of your readers, I am quoting below from my answer to Mr. Merrill:

"According to the records in this office, which include reports from all utilities operating in the state, the figures are as follows:—

Generated in South Carolina in 1926	1,020,515,465	kw. hr.
Sold in South Carolina in 1926	782,332,257	"
Difference	238,183,208	"
Add, for inter-company sales	76,276,680	"
Making	314,459,888	"
Deduct 15 per cent for transmission and other losses	153,077,319	"
Export power	161,382,569	"

Or approximately 18.6 per cent.

"If you take the difference between power generated and power sold as the amount of export power, the percentage will be approximately 30.8 per cent, or almost the same percentage given by your article, but you will realize that power used by the utilities at their plants, transmission, transformation, and distribution losses should be deducted from this difference to arrive at the export power. I have used 15 per cent for these items which may be a little small.

"In the above figures no account is made for a few small plants doing entirely local business that do not have a record of kilowatt hours generated and sold which will amount to possibly between fifteen and twenty million kilowatt hours per year and would only serve to slightly reduce the above percentages.

"In these figures no account has been taken of power generated by the Augusta-Aiken Railway & Electric Corporation of Augusta, Georgia, whose plant is on the Savannah river forming the boundary line between Georgia and South Carolina with the plant on the Georgia side of the river. The total amount of power generated by this company from the Savannah river in 1926 was 74,700,780 kilowatt hours. On the other hand the total amount of power generated by the Southern Public Utilities Company at its Gregg Shoals plant on this same river was used in the above totals.

"I do not have the amount generated at this plant separate from the other plants of the Southern Public Utilities Company."

—B. H. Barre,
Gas and Electric Engineer,
The Railroad Commission of South Carolina,
Columbia, S. C.

What Others Think

Are the Utility Companies Responsible for the Trend from State to Federal Regulation?

COMMISSIONER I. M. Bailey, of the North Carolina Corporation Commission, raises some pertinent questions in the booklet "The Trend of Regulation," which prints his recent address before the Southeastern Division of the N. E. L. A. After mentioning the change in policy from local to state regulation, he discusses the present tendency toward Federal regulation, and then suggests a means of combating this tendency. Referring to the benefits which have been derived from state regulation, he says:

"I think it may be considered conclusive that regulation by State Commissions as contrasted with the system known as 'home rule' has not only proven a great success but is the system preferred by the public utility industry and the public generally. Whether this regulation by State Commissions is preferred as against Federal regulation is not necessarily the subject now under consideration. It is sufficient to say that regulation by state authority has, through its administration of the public utility laws, removed many causes of distrust of the industry on the part of the public and of the public on the part of the industry. Abuse has become a matter of record in the past and a thing now suggested mainly in the heat of argument. Better contracts, more favorable and dependable rates, a more constant and useful service, and an improved relation between the public and the utilities, have been but the natural outgrowth of this state regulation carried on in the light of facts gathered from the public and the industry. With the aid of favorable economic trends, these changes have contributed largely to the development of the industry to the point where it draws, upon almost instant demand, from the public the funds necessary in the great programs of development. It has made possible a stability that under no other conditions would have been possible, at times, it is true, under adverse conditions. The states have met each situation in a manner that has, in most instances, held the confidence of the public and the industry. There are, however, certain trends which have resulted from these accomplishments and which sound a note of warning to all concerned. To these problems and trends I would invite your attention."

Of the trend towards centralized control, he says:

"It is useless to discuss with you for a moment the nature of our Government, its local, state, and Federal fields of jurisdiction, and yet it is important to say that today there is a greater tendency toward centralizing in the Federal Government, more power in every line of activity that partakes in any way of an interstate nature, than ever before in the history of our country. This is not only true in those fields of regulation which have already been delegated to that Government, but equally true in those fields of endeavor which years ago were considered essentially local or for the states. This trend is so great and has gone so far beyond what our fathers thought that one often wonders if Alexander Hamilton has not many times disturbed his shroud in his silent protest against this trend."

ONE of the main reasons for this tendency toward Federal regulation appears to be the widening field of utility service. Upon this point, Commissioner Bailey comments as follows:

"It is very easy for one to understand why the widening of the field of service beyond state lines brings into play, in regulation, a trend toward placing the power to regulate within the jurisdiction of the government having authority over the enlarged field. If two states are served by the same company, there are two jurisdictions which may have very widely differing policies with respect to regulation, and yet each state is entitled to exclusive jurisdiction within its own borders. As new states are served, this problem becomes correspondingly complex as new and differing policies are brought to bear in the regulation of the industry. As the policies of the different units fail to harmonize there is a tendency to get away from the

conflict and then, just as the local units were evaded in the early stages of regulation, the state's authority is sought to be evaded. The central Government, having jurisdiction over the entire field, is seen as the way of escape. In the absence of counteracting influences, regulation of such authority results either by sufferance or by positive action as a result of a definite demand."

THE tendency toward Federal regulation is not altogether surprising. Is there anything on the part of the public and utilities which helps to hurry it? Commissioner Bailey thinks there is. He says:

"Among the more important matters which may accelerate this trend toward Federal regulation, we may consider a few as indicative of the situation and without any effort to discuss them in the order of importance, or of their accelerating force, we may state them as, on the part of the industry, the tendency to insist upon the length of the permit, the method of stating rates, the formula for determining value for rate purposes, the standards of service, and the tendency, in order to maintain any and all of these, to take advantage of the lack of jurisdiction on the part of states over the entire system, and, on the part of the public, the insistence upon all of these and the added tendency to replace a lack of complete jurisdiction with a suspicion as to the information furnished. The main question is always the right, but the proverbial your side—my side—the right side, makes the solution a difficult one."

COMMISSIONER Bailey believes that more co-operation between the states and the utilities is necessary if the benefits of state regulation are to be retained. As to this he says:

"To be specific, is it not possible and highly desirable to bring together two or more states in one co-operative effort when a general matter of policy is to be considered with reference to a company operating in more than one state? It would seem that such, if it must come, can best come before the states have lost their rights, and the public and the industry have been deprived of the instrument of regulation now recognized as most desirable.

"Such a suggestion naturally presupposes certain uniformity in many things touching the fields of regulation and the policies of the industry. On the part of the states, it must be based upon laws as nearly uniform as possible, or of such flexible nature as to permit adjustment to uniformity. Rules and practices prescribed by the states for the conduct of the industry are of equal importance as to uniformity. On the part of the industry it assumes uniform rates and charges, uniform standards of service, uniform policies of extension and expansion, uniform rules as to values and depreciation, and uniformity of purpose."

ONE important factor in the tendency toward Federal regulation must, however, not be overlooked. That factor is the desire for power. It seems to be natural to seize power whenever men are in a position to do so. The tendency of the Federal Government to enlarge its jurisdiction over various activities is not wholly due to inability of the states to cope with such matters as the Federal Government seeks to regulate. It is partly explainable by congressional thirst for power. If this becomes a controlling motive in utility regulation, such co-operation as Commissioner Bailey advocates will be unavailable.

—D. L.

THE TREND OF REGULATION. An address by Honorable I. M. Bailey of the North Carolina Corporation Commission. Atlanta, Georgia: Southeastern Division, National Electric Light Association. 15 pages. 1929.

The Growing Problems in the Regulation of Motor Carriers

IN his new book on "Motor Carrier Regulation in the United States," Professor John J. George has made a valuable contribution to a subject which is of growing importance owing to the rapid expansion of the motor carrier industry during the past few years.

Professor George is professor of History and Government at Converse College, Spartanburg, South Carolina. He has been a contributor of motor carrier articles to *Bus Transportation*,

Missouri Bar Bulletin, National Municipal Review, Indiana Law Journal, St. Louis Law Review, and *American Law Review.*

Professor George has made a comprehensive study of every phase of his subject, citing ample Court and Commission decisions for the views expressed. The book is in fact an excellent though brief exposition of the law of motor carrier regulation. Of the rapid growth of the industry, the author says:

"Given particular impetus by wartime exigencies, public motor carriage has expanded rapidly in the last few years. On January 1, 1925, there were in operation 52,925 busses; a year later, 69,425; in 1927, 80,040; in 1928, 86,000 such vehicles were employed. On the latter date, companies and individuals engaged as motor common carriers numbered 7,102. Fifteen motor carrier companies each operate more than 100 busses, and eighteen electric lines do likewise. Today, 50 per cent of all electric lines operate motor busses. It is estimated that from 125,000 to 150,000 people are employed in the motor carrier business proper; it is practically impossible to approximate those employed in the motor carrier equipment manufacturing industry. "For equipment, terminals, and garages, motor carriers spent in 1926 more than $300,000,000; the total present investment in motor carrier property is estimated at $455,000,000. The proportion between the first figures and the second emphasizes the rapidity with which the industry is expanding.

"Volume of business done is another index to motor carrier magnitude. In 1926, motor common carriers transported 2,100,000,000 passengers, and realized a gross revenue of approximately $300,000,000. It is significant that more than 90 per cent of passengers carried by motor for hire were carried by common carriers.

"Total motor carrier route mileage in relation to both total railroad mileage and to total mileage of surfaced highways serves as another valuable index to the magnitude of motor transportation. Common carriers cover today 263,000 miles, which is almost double the mileage of state surfaced highways, approximately equivalent to the total mileage of state highway systems, and 6,000 more than the mileage of American steam lines. One company doing business over 5,000 miles of route possesses resources of more than $2,000,000. On September 11, 1928, there arrived in New York the first bus of our coast-to-coast line; passengers came through from Los Angeles, a distance of 3,433 miles, in five and a half days. Regular arrivals and departures of busses over this line are now a daily occurrence at the Capital Stage Terminal, New York city. As in aerial and train transportation, sleeper service is now offered to long distance travelers."

PROFESSOR George points out the facts which make the regulation of interstate operation a problem in regulation. He says:

"As could be easily foreseen, motor transportation has not recognized the accidents of state lines. It was imperative that this transportation become interstate, especially in urban areas near state lines, such for example as New York city, Washington, Chicago, and St. Louis. Similarly, states like Massachusetts, Connecticut, New Jersey, and Rhode Island, because of smallness of area, were destined to become the scene of extensive interstate operations.

"The mileage of interstate bus routes serves as one index to the magnitude of interstate motor carriage. Of the total 263,000 of common carrier bus route mileage in the United States, 48,362, or approximately one-fifth is interstate. Of this interstate mileage, Oregon has 2,996; California, 2,895; Massachusetts, 3,000; Missouri, 3,491; and New Jersey, 4,488. We find, expressed in percentage of entire bus route mileage (interstate and intrastate), that interstate bus route mileage constitutes 32 per cent in Oregon and Massachusetts; 40 in California; 62 in New Jersey; 70 in Rhode Island; and 93 per cent in the District of Columbia. On the other hand, states with extensive total bus route mileage but only a small interstate percentage include Ohio, with 13 per cent, and Pennsylvania, with only 6 per cent. Other indices are the number of interstate bus operators and the number of vehicles employed. There are 515 such carriers using 3,012 busses. The Northeast shows the greatest proportion of these; here are found 200 of the 515 carriers, and 1,339 of the 3,012 busses. Among the states in this region New Jersey leads with 63 carriers and 476 busses. Operating in Rhode Island are 60 motor carriers, 47 of whom are interstate. Intrastate busses in Rhode Island numbered 106 in 1926, while interstate totalled 109. More than half the busses operated in Colorado are interstate. In contrast one finds that only a small percentage of operators and vehicles are interstate in Pennsylvania, Ohio, and Washington state.

"It appears that in 1926 there were engaged in interstate motor commerce approximately 25,000 trucks.

"But the 'interstate' figures tend to

minimize the magnitude of interstate carrier business, for often an interstate carrier engages the same vehicle in both interstate and intrastate carriage. As early as 1924 it appeared that only one-fourth of the motor transportation was interstate. Because of decisions of the United States Supreme Court in 1925 barring state denial of certificates to interstate carriers, the last three years have seen rapid increase in the number and volume of business of interstate carriers. Within one year after the Buck decision, 54 interstate lines sprang into existence between New Jersey and New York city and between New Jersey and city of Philadelphia."

It appears that consolidations have been the order in the motor transportation field as well as in other lines of business. Of this the author says:

"Consolidation is the keynote of motor carrier development. This is only a repetition of the trend which has characterized the last half century of our industrial life in general as well as the public utility field in particular. Much of the transferring of certificates is done to effect consolidation. This consolidation is not at all limited to any particular section.

"In 1925 there were in the United States some 8,500 motor car carriers; on January 1, 1927, there appeared to be 7,215 operators. Not all operators disappearing in this period did so by consolidation—many became victims of financial failure. While making allowance for those who failed, we must take into account the fact that some—perhaps many—new operations were authorized. The figures given and their consideration in view of the fact that some operators made their exit and others their initial appearance, indicate the extent to which consolidation is taking place. The longest end-to-end consolidation reported for the first half of 1926 was that of the lines between New York and Miami. On July 1, 1921, there were on file with the California agency 870 tariffs; merging is largely responsible for the reduction of this number to 670 by July 1, 1924. This tendency to consolidate was one of the most evident facts brought out by the regional hearings conducted by the Interstate Commerce Commission in the autumn of 1926.

"Among the causes of consolidation of motor carrier interests are found the entrance of skilled transportation men into the field, the desire for larger credit and buying power, and the opportunity afforded for more effective protection of motor carrier industry, economic and legal.

"Nor have the results been disappointing to those bringing about consolidation. Consequent advantages effected include better credit, larger buying power, more desirable and efficient maintenance facilities, ability to secure higher calibre personnel, greater utilization of equipment, better equipment, more co-ordination of service and extension thereof, lessened overhead, decreased competition and greater financial stability of carrier.

"A glance at this list reveals advantages which have redounded to the public good. So long as consolidation is helpful to public interest it should be not only permitted but even encouraged. The process of consolidation should be carefully safeguarded so as to prevent its becoming detrimental to public interest. Flexibility of the law on transfers and seriousness and intelligence of the administrators—here as elsewhere—are indispensable to the realization of a proper program of consolidation."

No better summary of the result of the author's research could be given than that which he himself makes. He concludes his work with the following summary:

"Motor carrier regulation finds its *raison d'etre* chiefly in the necessity of preserving the highways and in furnishing service as demanded by public convenience and necessity. With these objectives in mind, the states have set about regulating motor carriers. Legislation, beginning in earnest about 1921, has taken the form of a modification of existent utility laws so as to make them applicable to motor carriers, or of separate, specific acts designated *de novo* for them. In a few instances construction of existent statutes has sufficed to subject the carriers to control.

"Regulatory legislation has aimed primarily at the intercity carrier operating over definite routes or between fixed points and so holding out service to the public as to constitute a common carrier. In determining who is a common carrier the Commissions have not avoided making legal errors. Less attention has been given the irregular carrier, who, operating between no definite points or on no regular route, yet cuts into the business of the certified carrier. But in several states the activity of this type of carrier has been sufficiently important to demand regulatory attention.

"Unauthorized carriers, known as 'gyps,' 'wildcat operators,' or 'snipers' have plagued the certified carrier, who has served effectively as informer and thereby aided in the elimination of these 'outlaws.'

"Authority to operate a public motor service is evidenced by a certificate of public convenience and necessity. Around the granting of this certificate much formality if not technique has developed. Experience has shown that the procedural requirements for certificates must be met,

and that compliance with requirements must be observed by the bona fide operator on effective date in so far as he is subject to those requirements. In some areas there are certificate routes yet to be preempted; in others the formal task of granting certificates to establish service is in great part a *fait accompli*.

"REQUIREMENTS for licensing of drivers and for safety in the operation of public motor vehicles are generally sufficient in substance. Licensing of drivers takes on too much of an empty formality; more serious administration is needed here. Schooling drivers in regard to their responsibility to the public, whose lives are daily in their care, has resulted in a decrease of accidents; continuance of this method on a large scale will do more to further public safety than the formal requirements as to age and citizenship of drivers. Some are capable of driving a public vehicle at sixteen years of age; there are others who never will be. Much emphasis is put on strength; too little on strength of character. Let us cast aside the nineteenth century idea that the biggest brawn makes the best policeman. Public service, public safety, and private profits to the carrier hinge around the oftentimes sole representative known to the public—the driver. Encouragement as to the calibre of the future driver lies in the establishment of drivers' schools, the progressive attitude of many managers, and observations in different sections convincing the writer that a driver can combine personal appearance, mechanical and business efficiency, and gentlemanly courtesy.

"Liability insurance on passenger carriers and property carriers in intrastate operation has been required, and the requirements upheld. The former as applied in interstate transportation has been upheld as required for protection to nonpassengers; the latter has been declared nonapplicable in interstate carriage. Liability protection, however, is recognized as necessary in proposed Federal legislation.

"The public is more interested in motor service than in the cost thereof. Regulatory bodies recognize this demand for proper service and are setting up satisfactory standards. Little or nothing has been done toward systematic rate fixing, and there is no reason to believe any radical turn will be made in the immediate future.

"STATES differ much as to the grounds for revocation of certificates. Power to revoke is becoming a momentous one as the business existing under a certificate expands; exercise of this power calls for great caution. There seems to be no general objection to the manner in which it has been exercised thus far.

"Several decades passed before public policy demanded even a pretense at publicity in railway affairs. But we live in a different age; not one decade has passed before a hopeful beginning has thus been made in regard to motor carrier activity.

"Motor transportation of passengers and property is demanded today by the exigencies of social and industrial life. The relief granted by the public carriers to private individuals eliminating the necessity of driving and parking a car in congested areas bids fair to become more appreciated.

"CONSOLIDATION among motor carriers has come into importance and will be one of the outstanding characteristics of the development of the future. While there is some evidence that motor carriers desire to retain their separateness from rail lines, the fact that many states have enacted statutes to allow rail lines to engage in motor service, and the extent to which rail lines have gone already in establishing motor service, together with the growing attitude of regulatory agencies toward protecting the established carriers—all this points to a possible if not probable eventual rail control of motor carriage. And also the trend in the general field of utilities toward monopoly supports this conclusion.

"As motor carrier operation became intercity, it has also become interstate. The time has arrived when, under our constitutional system the Federal Government must take over the regulation of the interstate phase of motor transportation. State experience in the railway field fifty years ago proved beneficial to the Federal Government when it undertook railway regulation. In like manner will state experience serve as a guide to Federal regulation of interstate motor transportation.

"Successful membership on a regulatory body requires specialized training, fairness in attitude, seriousness of purpose, and security of tenure. Legislators can only sketch the scope and methods of regulation; courts exercise authority over the process in only the relatively few cases brought before them. The burden of success or failure of regulation depends primarily on the personnel and authority of the regulatory agency.

"Effectiveness of regulation must be viewed as a relative matter. Measured by this standard, a hopeful beginning has been made in the field of motor carrier regulation."

—D. L.

MOTOR CARRIER REGULATION IN THE UNITED STATES. By John J. George, Ph.D., Spartanburg, S. C. Band & White. 266 pages. 1929. $3.50.

Pure Food Labels on Bottles of Propaganda Medicine

MR. Judson King, in his booklet "The Challenge of the Power Investigation to American Educators," reviews some of the evidence before the Federal Trade Commission in its investigation into the propaganda activities of the electric power industry. He compliments the Commission on the thoroughness and fairness of the investigation; and he concludes, on the testimony already offered, that the proponents of the investigation have established their case. He says, for example:

> "There is abundant testimony to prove that the utility interests are attempting to say what shall be taught, how it shall be taught and by whom it shall be taught in matters which affect them. In short, they seek control of the most fundamental opinion-forming agency of the Nation not alone for today but for the indefinite future. They are at bottom attempting to make supposedly independent universities and technical schools as well as the teachers and professors therein sponsors for and mouthpieces of their propaganda. Not only are these professors induced to make absolute misstatements of fact but equally misleading is the practice of stating only one side of the case and leaving the other unsaid, or at least inadequately presented, and thus the private utility viewpoint is constantly emphasized to their students and to the public."

Mr. King's conclusions are extremely unfavorable to the utilities.

ONE of the points insisted on by those who are attacking propaganda by utilities is that the source of the propaganda should be clearly indicated. It does not appear from this pamphlet (which, of course, is propaganda in itself) just what the "National Popular Government League" is. Perhaps the reader ought to know, but the chances are that he may not. A league may be a powerful organization or it may not be much more than a name. It would perhaps be too much to ask for a statement in a bulletin like this of who the leading supporters of the league are; but it would be helpful to those who are interested in inside facts to have the object of the league clearly announced in the bulletins.

Nothing in the title "Popular Government League" indicates what it stands for. All persons are interested in popular government, but there is no universal agreement as to the best means of attaining that end. The bulletin, however, does contain the announcement that the league is financed wholly by dues and voluntary contributions from its friends and that its funds do not permit gratuitous distributions of its publications.

—D. L.

THE CHALLENGE OF THE POWER INVESTIGATION TO AMERICAN EDUCATORS. By Judson King. Washington, D. C.: The National Popular Government League. 48 pages. 1929. 25 cents.

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The March of Events

Tidal and Other Water Power Proposals

TWELVE applications for permits or licenses under the Federal Water Power Act were filed with the Federal Power Commission between April 26th and June 8th. This brings the total to 994 applications which have been received since the creation of the Commission.

Of special interest is the application by Dexter P. Cooper, Inc., for approval of a plan for the harnessing of the water power of Passamaquoddy Bay. The application calls for a series of dams connecting the mainland with islands across the mouth of Passamaquoddy Bay to impound tidal waters within the bay, another series of dams and a power house to be built between Passamaquoddy and Cobscook Bays, and a third series of dams across the mouth of Cobscook Bay to exclude tidal waters from the bay.

The plans include suitable gates for the passage of tidal and tailrace waters and two navigation locks, one from sea level into Passamaquoddy Bay and the other from sea level into Cobscook Bay.

The proposed initial installation is 464,000 horsepower and the ultimate installation 1,087,000 horsepower. It is proposed to utilize the power for general purposes in Maine, northeastern Massachusetts, and the province of New Brunswick.

The other applications relate to hydro-electric development in states as far west as California and as far south as Florida. Probably the smallest development is one in California, where two small diversion dams, each about two feet high, would be constructed. The capacity of the project is estimated at one horsepower, which when developed will be used for lighting, heating, and power purposes at a resort.

Arizona

Rehearing on Phone Rates to Be Asked

THE city commission of Phoenix on June 8th decided to ask a rehearing on the recent decision of the State Corporation Commission which granted the Mountain States Telephone & Telegraph Company authority to increase its Phoenix telephone charges by approximately 25 per cent.

The case was first opened about a year ago, says the Phoenix *Republican*, and on request of the telephone company the case was continued. A group of citizens which had joined forces to oppose the phone rate increase were under the impression at the time the decision was handed down that the case was still under continuance. One of the city commissioners said:

"I want it understood that I am not saying the telephone company should not be allowed the increase, but that the people be allowed to present their side of the case so that a decision may be made upon a basis equitable to all."

California

San Francisco May Lose 5-cent Fare

THE nickel street car fare—a thing of the dim and distant past in most cities of the country—but retained at opposite ends of the Nation—in San Francisco and in New York,—says the New York *Sun*, is threatened in the former city. Under a contemplated reorganization of the street railway situation it seems generally agreed that the 5-cent fare must go into the discard or that a subsidy from taxpayers must support it.

There are competitive street railway systems in San Francisco, unlike the situation in most cities. There are two private corporations and a municipal car system. Par-

ticularly in the downtown district there is direct competition. It is generally agreed that this competition has maintained the 5-cent fare. But now with unification of the lines under municipal ownership it is reported that the alternative of a 7-cent fare or a subsidy arises.

In contemplating unification of the lines and raising the fare, the *Sun* continues, the city is faced with a problem that has been faced by nearly every municipality. With patronage as at present a 7-cent fare would be adequate but it seems certain that if the fare is raised, patronage will fall off. This outlook has led to the talk of a subsidy, but the San Francisco officials, we are told, are also considering the elimination of automobile parking on downtown streets and abolition of jitney lines with the idea of forcing people to ride on street cars.

San Francisco Phone Rate Inquiry

THE city of San Francisco on May 31st closed its case against the application of the Pacific Telephone & Telegraph Company for increased rates. E. A. Bender, one of the accountants for the municipality, summarized the opposition and introduced two proposed rate schedules, one based on a return of 6 per cent and the other on 6½ per cent, which embodied decided reductions in telephone rates.

The city contends that the company is entitled to a return of only 6 or 6½ per cent on its investment and that not only should the company be denied the increase and income which it is seeking, but that its revenue should be considerably reduced through a corresponding reduction in rates.

Lester S. Ready, chief consulting engineer for the Commission, on May 14th had recommended a general average increase of 12 per cent, which would be more than the rate submitted by the city but less than the amount asked for by the company.

With an attack by hotel men on the rates submitted, the opponents of the rate increase on June 13th, completed their presentation of evidence. The company will begin the presentation of rebuttal evidence on August 13th.

Phone Probe in Southern California

SIXTEEN attorneys representing telephone companies, municipalities, and interested organizations, says the Hollywood *News*, on June 7th gathered before the State Railroad Commission in Los Angeles to participate in the Southern California sessions of the state investigation of telephone rates. The Commission on its own motion ordered this investigation while it was engaged in the consideration of a petition for higher rates in the San Francisco area. The Southern California Telephone Company is a subsidiary of the Pacific Telephone & Telegraph Company, which heads the northern system.

Evidence of Commission investigators was placed before the Commission. The company will reply at the next hearing, on August 15th. The testimony tended to show earnings of 9.6 per cent on an investment of $97,100,000 in 1928.

The attorney for the company asserted that although he had not had time to analyze the data submitted, there was evidence that the company had sustained losses in the past. He said that company figures show less than 7½ per cent return for 1928.

Hearing on Gas and Electric Rates

THE Commission on June 4th opened its investigation of the question whether the rates of the Great Western Power Company and the Pacific Gas & Electric Company should be reduced.

The Great Western Company through its attorney, Chaffee Hall, protested against any investigation. He contended that the Commission had not fixed a rate base or historical valuation for the company since 1913 and had done nothing to indicate that the return made by the company was in excess of a reasonable amount.

He cited the recent ruling of the Supreme Court in which it was held that Public Utility Commissions should take into consideration the factors of reproduction cost new in fixing a rate base.

Dion Holm, assistant city attorney in San Francisco, presented to the Commission a

resolution from the board of supervisors demanding a hearing on the earnings and rates of the Great Western, saying that the company's rates are excessive.

District of Columbia

New Move for Higher Fares

THE Capital Traction Company on June 13th filed a new petition for an increase in fares to 10 cents cash with 4 tokens for 30 cents. About a year ago a similar application was filed but after several hearings by the Commission the increase was refused because of a pending merger of the Capital Traction Company and the Washington Railway & Electric Campany. It was intimated that if the merger were not approved by Congress a new petition might be filed.

The agreement for unification of the lines was signed by the company and the plan, with modifications, was approved by the Public Utilities Commission. These modifications were accepted by the utility. The plan was then sent to Congress for approval but failed to meet the approval of the Senate District Committee, which employed experts. Congress, however, has failed to approve any of the plans submitted.

It is the contention of the Capital Traction Company that it has earned only 3.50 per cent on the value of its property and that to enable it to earn 7 per cent under present conditions would require a cash fare of 10 cents without tokens. The company, however, has offered to accept a lower return under the plan of 10 cents cash and 4 tokens for 30 cents.

Harleigh H. Hartman, who recently became a member of the Public Utilities Commission, is reported in the Washington *Star* as saying that he would make an exhaustive study of Washington's transportation problem with a view to bringing about, if possible, an operating unification of the transit lines which would give the public substantially the same benefits offered in the deceased merger plan of the company. Through a general rerouteing of the car and motor bus lines, which the Commission has authority to order, Mr. Hartman, it is said, believes the standard of service can be materially improved and that economies in operation can be effected which would remove the present spector of increased fares.

A hearing on the fare application has been scheduled for July 22nd, and the Commission has ordered that the Washington Railway & Electric Company and the Alexandria, Mt. Vernon & Washington Company be brought in as parties. This is because of the uniform fare problem.

Indiana

Storm Damage Cause of Rate Plea

INCREASED rates to meet expenditures incurred in putting property in condition as a result of storm damage were asked by the Laporte County Telephone Company, says the Indianapolis *Star*, in a petition which was filed with the Commission on June 8th.

It is alleged that a storm on May 2nd damaged the company's property to the extent of $140,000. An increase of 50 cents a month on all classes of service in Laporte was asked. Toll charges of 10 cents on station-to-station and 15 cents on person-to-person calls in the country were also being sought.

Gas Trust Defended

ATTORNEYS for the city of Indianapolis and the trustees of the Citizens Gas Company have filed answers in the Federal Court suit brought by certificate holders to enjoin the acquisition of the gas plant by the city in accordance with the terms of a trust created in favor of inhabitants of the city and gas consumers.

Allegations of the common stock certificate holders that the charitable trust was broken when a franchise from the city was surrendered to the state are declared to be fallacious for the reason that the trust was established and written into articles of incorporation as a consideration precedent to the granting of the city franchise. One of the answers states in part:

"The plaintiff and each and every present or former holder of trustees' certificates has received, accepted, and held such trustees'

certificates containing the specific agreement and has never at any time had any other evidence of his ownership of the beneficial interest in the Citizens Gas Company. The plaintiffs and all the other holders of beneficial certificates are bound by each and all of the terms and conditions of the subscription contract and beneficial certificates as well as by the provisions of the franchise contract, the articles of association, the amendments thereto, and the public charitable trust created at the time of the organization of the Citizens Gas Company, of Indianapolis.

"Neither the plaintiff nor any other present holder of such beneficial certificates has ever objected or protested against the form of such certificate or the covenants or agreements therein contained, or in any way at any time evidenced his unwillingness to be bound thereby until within the last few months, when publicity was given to the plan of the city of Indianapolis to acquire the plant and property of the Citizens Gas Company; that at no time either before or after such mentioned publicity has the plaintiff or any other holder of certificates surrendered or offered to surrender the same, or asked or demanded the issuance to him or them of certificates representing his or their beneficial ownership free from the conditions set forth."

Kentucky

Louisville Fare Bill Signed

THE Louisville board of aldermen on June 13th passed Mayor William B. Harrison's ordinance fixing the valuation of the Louisville Railway Company at $18,000,000 and the rate of fare at 7 cents, and Mayor Harrison has affixed his signature to the measure.

The company immediately filed suit in Federal Court to obtain a 10-cent cash fare with 3 tickets for 25 cents. A hearing before Judge Dawson was set for July 9th by agreement.

Maine

Power Export Opposed

THE Carlton Bill providing for the export of power was passed by the legislature and recently signed by Governor Gardiner. A referendum will be held in September, when the voters will have the final say.

Opposition to the bill has been somewhat crystalized by the formation of the Consumers Protective League "to conserve Maine resources for Maine development." It is proposed to make this organization a statewide federation of local units.

Ex-Governor Baxter in a speech on June 4th declared that the adoption of the law really strengthened the state's control. His attitude for twenty years, he said, had been that the state should not surrender its control over water power resources, and the Carlton Bill was no departure from that position. It provided plenty of safeguards and control.

He predicted that the power companies would not exercise their right of export to any considerable extent since the cost of transmission lines and the increasing use of power in Maine, some of it perhaps for extensive railroad electrification, may convince them that after all there will be a home market for their products even though large developments are immediately undertaken.

Opposing forces contend that the export of power will not lower local rates by encouraging power development and that Maine will not be benefited. There is also considerable controversy over legal problems raised on constitutional grounds relating to interstate commerce and the imposition of a tax on the power which may be exported to other states.

Maryland

Rates for Fire Alarm System

AN appeal has been made to the Commission on behalf of the Prince Georges County Firemen's Association for lower fire alarm system rates. It is claimed that the charges of the Chesapeake & Potomac Telephone Company are prohibitive.

The townships surrounding Washington, D. C., located in Prince Georges county, it is stated, through their rapid development have found it necessary to adopt sirens upon their respective fire houses as an efficient method of calling out their men. These have been, and others are, preparing to connect up with the local phone exchanges, and a decided variance in charges has been made by the telephone company.

Since the voluntary fire companies are purely for public benefit, it is contended that consideration should be given to this matter and a lower and more uniform rate should be charged. Exchanges, it is asserted, are in closely built locations where the fire companies are better able to pay, while those farthest removed are usually the poorest and are required to pay higher charges for this class of service.

Massachusetts

New Law for Municipal Acquisition

THE law relating to municipal ownership of gas and electric companies was amended by the Massachusetts legislature at the session which has just adjourned. This legislation relates to the acquisition of plants owned by private companies.

Under the former law, if a municipality desired to supply its inhabitants with gas or electricity, the municipality was required to do so on two separate occasions—in towns by votes of the town meeting and in cities by votes of the municipal government subsequently ratified by the people. In a municipality where a private company was doing business the company could elect to sell its plant and property and, if it so elected, the municipality must purchase at its fair market value, without enhancement on account of future earning capacity or good will, as determined by the Department of Public Utilities, subject to an appeal to the supreme court for errors in law.

As amended, the law requires municipalities to pass votes as before. If the company elect to sell, the price to be paid is based upon cost less depreciation as determined by the Department of Public Utilities, without any express provision for appeal. After the price has been determined the company may withdraw its offer to sell if it does not like the price and likewise the municipality is not obliged to buy if it thinks the price too high. If, however, the company is satisfied with the price and the municipality refuses to buy at that price, then the municipality may not go into the business and can pass no new votes for two years.

Representative Pratt, of Saugus, immediately after the session, filed with the clerk of the House a new bill which he declared was designed to "put the teeth back in the municipal lighting bill, extracted by the Senate."

He takes the position that the bill was badly multilated in the Senate. Among the amendments were provisions that the purchase of municipal lighting plants be approved by vote of the selectmen; that the taking price fixed shall include severance damages; and that municipalities shall not be authorized to make contracts with street railways for the purchase of electricity.

Nebraska

New Telephone Company

THE Nebraska Continental Telephone Company of Columbus was incorporated at Lincoln on June 4th with an authorized capital stock of $2,400,000. The shares include 7,500 of preferred stock and 16,500 of common stock of the new company.

The Continental Telephone Company of Delaware, says the Omaha *World-Herald*, has within the last two or three years acquired several exchanges in the state and this reorganziation is expected to smooth out complications.

New Jersey

Court Postpones West Hudson Water Case

VICE Chancellor Backes on June 11th denied a motion to vacate an injunction prohibiting the Suburban Water Company from discontinuing service to Harrison, Kearny, and East Newark, and the court put the case over until October 2nd for the purpose of fixing rates.

A rate of $82.50 a million gallons was fixed by Vice Chancellor Backes in July, 1925, and a rate of $99 was established by the Public Utilities Commission on December 27th last. The new rate became effective against Harrison and East Newark on January 1st, and against Kearny on August 1st last as a penalty for that town having delayed proceedings in connection with fixing rates.

The injunction was granted when the municipalities charged that the Passaic Consolidated Water Company had threatened to shut off water.

New York

Brief Attacks Master's Report

A JOINT brief has been completed by the Public Service Commission and the city of New York in the injunction suit of the New York Telephone Company. A demand is made that the Master's report holding rates fixed by the Commission to be confiscatory shall be rejected and that the complaint be dismissed, or in the alternative that the report be returned to the Master with directions to make findings on all the facts necessary to a determination as to the effect of the rate orders of the Commission and that the motion of the plaintiff for a further temporary injunction be denied.

The brief contains an assertion that the value claimed before the Federal Court exceeded the amount which the Master was asked to find and that there is no basis for the company's statement that the Master's valuation represented an increase of only 4 per cent over the original cost. It is alleged that the depreciation reserve should be deducted or much smaller amounts should be allowed to meet the depreciation charges.

It is explained in the brief that the company's practice is to collect practically all of its telephone rates in advance and that the amounts of depreciation are not paid out but are put in the treasury of the company and charged as annual operating expenses. It is asserted that these withdrawals for 1927 amounted to more than $29,000,000, of which only $14,000,000 was spent or actually used. It is charged that the subscribers have not only paid too much in rates but that they are again penalized by having to pay a return upon property which has been provided by the excess amount which they have paid.

It is contended in the brief that rate regulation is a legislative function and that the legislature's agent, the Public Service Commission, after a hearing is entitled to all the presumptions flowing from a public duty done according to law and by sworn public officers. The allowance for going value is attacked; and it is argued that a return of 6 per cent on the fair value of the property is not confiscatory.

Service At Cost in Rochester

WHETHER the service-at-cost contract under which the New York State Railways are operating in the city of Rochester shall be renewed will have to be decided in the near future. The contract was entered into with the city on August 1, 1920, for a 10-year period. If the city officials want the contract to continue without any change they must notify the traction company on or before August 1st of this year, otherwise the contract may be renewed only if the traction company desires.

Several points in the contract are receiving special consideration. One is the question whether the Commissioner of Railways should continue to receive his pay directly from the trolley company instead of from the city. Another feature is the question of fares. The contract provides for a scale of fares ranging from 3 to 10 cents, giving the company an 8 per cent return on its investment when the fare is 3 cents and 6 per cent return when it is 7 cents or above. In only two years of the last nine, during which the contract has been in effect, has the company made its 6 per cent return, and in neither of these years was there a surplus sufficient to wipe out accumulated deficits.

A revolving fund is provided for in the contract for the purpose of securing rate decreases when the fund reaches $500,000, but there has never been such a fund because the company has never had anything but a deficit.

Bus Company Plans to Buy Second Avenue Railroad

NEGOTIATIONS have been completed for the purchase by the Omnibus Bond & Share Corporation of the franchise, rolling stock, and other equipment of the Second Avenue Railroad Company for the purpose of replacing surface cars with busses, it is reported in the New York *World*.

The purchase price is said to be $450,000, and the bus company in addition will assume the burden of $250,000 of accrued taxes if the contracts are approved. It is stated that no real estate is involved in the transaction, which is for cash.

Numerous obstacles, it has been pointed out, have attended previous efforts to accomplish this same end and it is held in certain quarters that these obstacles, or some of them, still stand in the way of final approval. Approval by the Transit Commission will be necessary before the deal can go through.

Brooklyn's Gas Rates

REHEARINGS on the application of the Brooklyn Union Gas Company for authority to charge 95 cents for the first 200 cubic feet of gas and 9 cents for each additional 100 cubic feet were begun before the Commission on June 11th. The Commission had denied approval of a similar schedule in March but a rehearing was granted.

Heckling by protesting consumers enlivened the proceedings during the testimony of Edward J. Cheney, engineer for the company. Mr. Cheney presented a study of costs which he had based on an analyses of operating expenses and operating income from sales of gas by the company during 1928. This testimony was designed to show that it cost the company 70 cents to produce the initial 200 feet of gas even before a customer uses any. This is the cost taken care of in the initial block.

Lewis H. Pounds, president of the Brooklyn Real Estate Board and former president of the borough of Brooklyn, was called as a witness on July 12th. He presented a series of studies of apartment houses which showed that tenants in these houses generally use a very small amount of gas. It is one of the contentions of the company that these small users fail to pay for the cost of the gas delivered to them.

Utica Rate Investigation

FURTHER hearings in the investigation of rates of the Utica Gas & Electric Company opened on June 3rd. Evidence in the gas case was completed and the electric case was taken up. Edward J. Cheney, consulting engineer, testified for the public utility.

Complaints have been filed, it is reported, on behalf of consumers in Frankfort, Ilion, and Herkimer against the schedules of the Utica Gas & Electric Company. Published statements that the village board would join in the rate war have been denied, however.

Ohio

Cleveland Gas Rate Battle

THE city of Cleveland is jubilant over the recent decision by the court of appeals holding that the East Ohio Gas Company cannot shut off its service to the public at will, while W. B. Cockley, counsel for the gas company, is reported in the Cleveland *Press* as saying that "of course this is not the end of this law suit." The supreme court will probably pass upon the case.

The constitutionality of the Miller Act is involved and the court of appeals upholds the contention that under the utility act the company must file notice with the Commission of a desire to withdraw its service.

New Gas Franchise Topic for Discussion

ONE good, gratifying and elevating thing the Columbus city council has done in passing a new gas ordinance is to give the people something to talk and argue about during the summer months besides the interminable, ofttimes tiresome, but always animated discussion of the subject of prohibition, says the Columbus *State Journal.* This paper adds, however, that of course there will be plenty of liquor of varying degrees of intoxication consumed in the course of the "grand gas debate."

In Columbus, where gas rates are fixed by contract between the utility and the city in the first instance, instead of by order of the State Commission as in some other states, the community seems to face almost constant agitation and litigation over rates. A franchise is granted for a 5-year period. If the rates fixed are unsatisfactory, this results in litigation. Sometimes this litigation is not finished until it is time to adopt a new franchise. Then the city faces litigation relating to the past five years and also the rates for the coming five years.

While there is still pending in the courts the question whether a 40-cent gas ordinance adopted five years ago was confiscatory, the voters are now considering the question whether they shall approve a rate of 53 cents for the next five years.

The city council first adopted an ordinance to have a referendum on a scale of rates ranging from 65 cents down to 55 cents per 1000 cubic feet. There was considerable opposition and a citizens' committee was organized for the purpose of opposing the adoption of the franchise.

Thereafter on June 17th the council swept aside the 65-60-55 cent franchise ordinance and adopted in its place ordinances providing for a 53-cent flat rate to be placed upon the ballot. It was indicated that the company would not accept the latter rate.

Pennsylvania

Scranton Water Rates

FURTHER hearings in the investigation of rates of the Scranton-Spring Brook Water Service Company were held early in June and the hearings were then adjourned to be resumed in July. Volumes of testimony have been taken since the case was started about a year ago.

The annual statement for the year ending July 30th was made public by the company on June 9th. This showed a gross income of $3,460,538 for the year, during ten months of which present temporary rates were in operation. The company, however, has been unable to collect a large percentage of its accounts in Luzerne county, where its patrons have defied the corporation, according to the Scranton *Republican.*

This paper tells us that in asking the Commission to approve increased rates, the water company estimated that the additional revenue to be derived from them would be about $1,500,000 a year. The recent statement shows an increase of $960,062. The cut in the service charge made by the Commission when it established temporary rates is said to have lopped off about $245,000 a year. This statement will probably figure prominently when the hearings are resumed.

Rhode Island

Billing Change Benefits Telephone Subscribers

TELEPHONE subscribers in Newport county, says the Tiverton *Sentinel,* in common with other Rhode Island telephone users are to have the pleasant experience of gaining a month on their telephone bills as a result of a change in the billing method which the telephone company has just announced. Formerly local subscribers were billed in advance for regular exchange service, but in the future both measured and unlimited service will be billed in arrears.

In order to put the local accounts on the new basis, the regular charge for exchange telephone service, it is stated, will simply be dropped from the next bill. For a month the regular charge for exchange service will disappear from the local statement.

Manager Shaw is quoted as saying that when the New England Company began to operate the telephones of Rhode Island and the Attleboros, advance billing was already established in this territory, and that practice was merely continued. It is a perfectly proper practice, he states, and in fact, it obtains generally throughout the United States. The Commission, however, had called to the

company's attention a certain inconsistency in its maintaining differing billing practices in different localities, and had suggested that it bring its local billing into line with that in other New England states where the company serves.

Tennessee

City Disapproves New Rates

MAYOR Watkins Overton of Memphis, speaking for the city commission, announced on June 18th the denial of an application by the Memphis Power & Light Company for permission to reduce commercial heating and industrial rates. The Commission took the position that domestic natural gas consumers must get a reduction in rates if there are any reductions made.

The company had sought a revision of its industrial rates to meet the competition of low coal prices. The president of the company, it is said, has refused to comment on the commission's decision other than to say that he would discuss the matter again with the commission.

Virginia

Power Connection Halted

JUDGE A. G. Buchanan in the Tazewell circuit court, reports the Roanoke *Times*, on June 15th handed down a decision sustaining every point in the contention offered by the town of North Tazewell in its petition for an injunction restraining the Tazewell Electric Light & Power Company from connecting its lighting system with that of the Appalachian Electric Power Company until a schedule of rates has been established either by agreement or by the State Corporation Commission.

The action was begun by town officials because of the proximity of the Appalachian's system, which supplies nearby towns with current on a scale of rates approximately one-half that which the local company is charging, it was claimed. It was held by the court that the Tazewell company had no legal status in the town and was only serving through the acquiescence of town officials.

West Virginia

Higher Phone Rates Asked

THE South Branch Telephone Company, of Romney, which operates lines in Hampshire, Hardy, Grant Mineral, and Morgan counties, says the Charleston *Gazette*, on June 5th filed with the Commission an application for authority to increase rates. The application was placed on the docket for a formal hearing on July 17th.

Higher Car Fares

EIGHT-CENT street car fares went into effect in Huntington on June 6th. This was under an order of the Commission suspending the old tariff for one hundred twenty days, pending further inquiry, in the case of the Ohio Valley Electric Railway Company. The *Herald-Dispatch* of Huntington describes the situation in the following manner:

"That portion of the average citizenry that still refuses tribute to the automobile finance companies—and some others who have two and three cars to the family—had its first experience in years with increased street car fares yesterday. And it wasn't so bad, after all.

"The increase falls heaviest upon the occasional trolley rider, who henceforth pays 8 cents for his ride. The veteran straphanger, however, who know the ins and outs of the street car game as well as the officials (the straphangers admit it) bought four tickets for 25 cents and exulted in the fact that they didn't have to hunt for the extra penny required under the abandoned 6-cent fare rate."

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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WISCONSIN RAILROAD COMMISSION.

N. J. BRAUN LUMBER COMPANY et al.

v.

WISCONSIN TELEPHONE COMPANY.

[U-3760.]

Service — Telephone exchange areas — Business subscribers.

A business community located at the dividing line between two exchanges in which the merchants are handicapped in not being able to have direct communication with patrons in both areas should be open territory so far as business telephones are concerned.

[February 28, 1929.]

INVESTIGATION by the Railroad Commission on its own motion into the practice of a telephone company with regard to business extensions in a certain locality; service directed to be extended in accordance with opinion.

By the **Commission:** Informal complaint having been made by the N. J. Braun Lumber Company of Jefferson, which operates a mill and store at Hubbleton, to the effect that public convenience and necessity require the extension of the lines of the Wisconsin Telephone Company to its place of business in Hubbleton, and the Commission being satisfied that facts existed sufficient to warrant further investigation and hearing with respect to the matter, a hearing was duly ordered on motion of the Commission and held at Hubbleton on October 11, 1928. N. J. Braun appeared on behalf of the N. J. Braun Lumber Company; Schubring, Ryan, Clarke & Petersen by Ray W. Clarke for the Commonwealth Telephone Company, and J. F. Krizek for the Wisconsin Telephone Company.

The testimony shows that the Crawfish river runs in a general northerly direction immediately east of Hubbleton and that the territory east of the Crawfish river is served telephonically by the Wisconsin Telephone Company from its exchange at Watertown, while the territory west of the river, including the unincorporated village of Hubbleton, is served by the Commonwealth Telephone Company from its exchange at Waterloo. The distance from Hubbleton to Watertown is approximately eight miles

and to Waterloo approximately six miles. Hubbleton contains, in addition to the mill and store of the N. J. Braun Lumber Company, a bank, hardware store, general store, garage, blacksmith shop, and some other related business places. These various business institutions draw their trade from the territory east of the Crawfish river as well as that to the west, the territory tributary in this respect to Hubbleton being substantially equally divided.

There is in effect a 10 cent toll between the Watertown and Waterloo exchanges. Thus, a patron of one of the Hubbleton stores living east of the Crawfish river must pay a 10 cent toll, in order to communicate with the store. It was stated that in the business of the N. J. Braun Lumber Company direct telephone connection is important for the reason that farmers bringing grain to be ground usually desire to purchase feed to haul back on the return trip, and as the feed business is highly competitive they desire to ascertain prices before hauling their load of grain to town. It was stated that if they cannot call without toll the natural tendency is to go to Watertown where a competitive business is located and where they can obtain price information without a toll charge. Other business men testified that their business with patrons located east of the Crawfish river is hampered by the lack of direct telephone communication, and a number of farmers living east of the Crawfish river appeared and testified as to the convenience which would be afforded them by direct communication by telephone to the Hubbleton business places.

On behalf of the telephone companies, it was urged that the present service is reasonably adequate and that the only advantage to be gained by the installation of service from the Watertown exchange at Hubbleton would be the elimination of toll charges and that the elimination of such charges is not a sufficient reason to justify the invasion of territory already occupied by another telephone company. It was urged that the distance from the Watertown exchange is so great that the installation of business telephones on a single party basis with the excess radius charges would be very expensive to the business men of Hubbleton and that the service designated as business rural would result in the

monopolizing of the rural lines by the business houses placed thereon to the detriment of service of other patrons on the rural lines.

The unincorporated village of Hubbleton happens to be located exactly at the dividing line between the Watertown and Waterloo exchanges. While it is not a large community, the business institutions there located do render a distinct service to the tributary community and are evidently under a severe handicap in not being able to have direct telephonic communication with their patrons. The Commission has in similar cases held that a business community located at the dividing line between two exchanges should be open territory so far as business telephones are concerned. Witte v. Wisconsin Teleph. Co. 28 Wis. R. C. R. 779 (anno.) P.U.R.1925D, 782; Bulman v. Boyceville Teleph. Co. (anno.) P.U.R.1926D, 423. The proper use of the telephones so installed in duplication could be insured by the filing of a special rule covering the situation which would preserve the right of the telephone company to discontinue service if the patron abuses the privilege and permits others to call over the telephone for the purpose of avoiding toll charges. While rural business telephones do not generally afford the class of service ordinarily desired by merchants, so long as the company offers such a service and has a rate on file therefor, it cannot deny that service to merchants applying for the same.

The Commission finds that public convenience and necessity require the extension of the lines of the Wisconsin Telephone Company into the unincorporated village of Hubbleton for the limited purpose of serving such of the business places located there as desire to become subscribers of that company for business service.

It is therefore *ordered* that the Wisconsin Telephone Company extend its lines and render business telephone service to any applicants therefor in the unincorporated village of Hubbleton, providing any class of business service covered by its rates on file with the Commission that may be requested by the applicants.

June 1, 1929, is considered a reasonable time on or before which the lines shall be so extended and service rendered.

P.U.R.1929C.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

RE WAVERLY WATER COMPANY.

[Application Docket Nos. 16562, 17212.]

RE E. J. STONE.

[Application Docket No. 19628.]

Certificates — Choice of applicants — Lower rates.

The contention that one applicant for authority to operate a water utility should be favored rather than another because of the lower rates contemplated is without merit where the Commission has supervision over the reasonableness of charges in any event, and in view of the fact that rates would necessarily be calculated on capital and operating costs.

[February 25, 1929.]

APPLICATION of a water company and an individual for authority to construct and operate a water utility over the same territory; certificate granted to existing utility; authority refused to individual.

By the **Commission**: By orders dated August 15, 1927, the Commission refused the applications of the Waverly Water Company for approval of an amendment to its charter and the beginning of the exercise of the right to furnish water in the territory covered by said amendment, for reasons stated in said orders, namely, that the Clarks Summit Water Company would be able to conveniently and adequately accommodate the public, under order of the Commission granting said company the right to extend its service into the territory covered by the amendment to the charter of the Waverly Water Company. The cases were appealed to the superior court, which court reversed the Commission's decision in the application of the Clarks Summit Water Company to extend its lines and service into the aforesaid territory. The Commission, thereupon rescinded its order in re application of the Clarks Summit Water Company, and on request of the Commission and the parties in interest the records of the Waverly Water Company were remanded to the Commission for further consideration.

The Waverly Water Company now holds a charter and cer-

tificate of public convenience authorizing it to supply water to the public in one of the four quarters of the village of Waverly, Lackawanna county, formed by the intersection of two highways at right angles. Its application and that of E. J. Stone, competitively seek the right to supply the remaining portion of the village. The applications cover approximately the same territory.

The company now supplies its present chartered territory with water from two pumped wells connected with a small reservoir and considerable 4-inch pipe. Since 1893, the applicant, Stone, as an individual, has been supplying water to a varying number of families in Waverly, the number not exceeding twenty however. It appears that within the last few years the spring, which was the source of his supply of water for Waverly, was condemned by the health authorities, and since that time the Waverly Water Company has actually been supplying its water through his pipes to the several families connected to them, and has been collecting the rates therefor. It also appears that a large part at least of these pipes have been in the ground for many years and are of little value at present.

Stone contemplates the drilling of a well, enlargement of an existing reservoir, if necessary, and the laying of new and additional pipes to connect with and extend his existing service lines. The Waverly Water Company likewise plans the immediate extension of pipe lines into the new territory, if approved.

The contention that Stone's application should be favored by the Commission because the rates which he states he contemplates charging are lower than those contemplated by the Waverly Water Company, is without merit in this proceeding. Both rates are based on calculations of capital and operating costs and, no doubt, would be modified to fit the actual conditions as experienced. In any event, the reasonableness of charges can be made the subject of further investigation by this Commission. The only question before the Commission at this time is as to which of the two applicants is best equipped to serve the public in the territory sought, and upon a consideration of all the facts of record, the Commission is of opinion that the territory of the existing company should be extended to include the entire village.
P.U.R.1929C.

Appropriate orders will, therefore, issue, revoking and rescinding the prior action of the Commission under date of August 15, 1927, refusing the applications of the Waverly Water Company, directing that certificates of public convenience issue evidencing the Commission's approval of said applications, and also refusing the application of E. J. Stone.

OKLAHOMA CORPORATION COMMISSION.

OKLAHOMA TRAFFIC ASSOCIATION et al.
v.
ST. LOUIS-SAN FRANCISCO RAILROAD COMPANY et al.

[Cause No. 6516, Order No. 4605.]

Reparation — Limitation of action — Commission jurisdiction.

1. Where the statute makes the award of reparation in the proper cases mandatory with the Commission and there is no statute of limitation covering reparation, the Commission cannot arbitrarily limit the period for which excess charges should be recovered but must award them for the period for which the charges are declared to be illegal, p. 440.

Constitutional law — Retroactive legislation — Reparation.

2. The Commission in exercising its powers expressly delegated by statute to award reparation in the proper cases for overcharges is not making a retroactive order prohibited by the Constitution, where the prohibition against such retroactive orders applies only to rates involved in cases on appeal in the supreme court, p. 441.

[February 23, 1929.]

APPLICATION of shippers of pig lead for reparation of alleged excess charges; reparation ordered.

Appearances: I. G. Bentley for complainants; E. T. Miller, Cruce & Franklin for St. Louis, San Francisco Railroad Company, defendant.

By the **Commission**: In our Order No. 3008 issued herein on the first day of July, 1925, we found rates on pig lead in carloads from Ontario and other points in Ottawa county, Oklahoma, to Oklahoma City, unreasonable and prescribed reason-

able rates on the basis of 33 cents per hundred pounds, in carloads, permitting the special arbitraries now charged by the Miami Mineral Belt Railroad Company and the Northern Oklahoma Railroad Company to remain in effect.

We further found that reparation to the basis of 33 cents per hundred pounds should be made on shipments which moved subsequent to March 21, 1925, the date of the filing of the complaint. We made no order of reparation, purposely leaving it to the parties to arrange payment of the reparation on the basis determined by us, without the necessity of such order.

Complainants thereafter filed petition for rehearing on the question of reparation, contending that the award should not have been limited to the date of the filing of the complaint, but should have been on all the shipments involved.

The principal facts were recited in our report in connection with Order No. 3008, and need not be repeated herein.

Subsequent to our findings and order herein, the Interstate Commerce Commission has had under consideration the question of rates on pig lead from Joplin, Missouri, to Oklahoma City, in its Docket No. 16274, Oklahoma Traffic Asso. v. St. Louis & S. F. R. Co. 129 Inters. Com. Rep. 461. That Commission found rates on pig lead, in carloads from Joplin, Missouri, to Oklahoma City, unreasonable and prescribed reasonable rates for the future on the basis of 36 cents per hundred pounds and awarded reparation on prior shipments to that basis.

The rate prescribed by this Commission of 33 cents per hundred pounds on pig lead, in carloads, is in line with the rates thereafter prescribed by the Interstate Commerce Commission of 36 cents per hundred pounds from Joplin, Missouri. At any rate, neither the complainant nor the defendants raised any question as to the disparity of the two rates or of discrimination one against the other.

The order of the Interstate Commerce Commission, however, awarded reparation for all shipments which moved within the period not excluded by the statute of limitations.

Section 16 (3) of the Interstate Commerce Act provides, in part, that: "All complaints for the recovery of damages shall

be filed with the Commission within two years from the time the cause of action accrues. . . ."

Defendants point out is their brief that, under the Federal law, there is a two year statute of limitations, but that "This State has nothing of the kind." They seem to be correct in their position thereon, for the Supreme Court of this State in Missouri K. & T. R. Co. v. Dewey Portland Cement Co. 113 Okla. 142, 146, 242 Pac. 257, 260, held:

"A statute cannot be declared to be penal when no penalty is provided therein. The statute in question, merely requiring the refund of excessive charges collected by a public service corporation, is remedial, and we, therefore, hold that the statute which limits the time in which an action may be brought to enforce a penalty or fine is not applicable, and that the plaintiff's cause of action is not barred by the statute of limitation."

However, no statute of limitations could be applicable herein because all shipments moved subsequent to two years prior to date of the filing of the complaint. Nor will the question of the statute of limitations, therefore, concern this Commission, or the supreme court should this case be appealed thereto.

[1] We are, therefore, called upon to determine whether, if the period of reparation is not limited by any statute, such limitation may be discretionary with us. We are of course, bound by the law. It is our business to apply the law governing the question of reparation and not to substitute our ideas of what the law should have been. As was said by the Interstate Commerce Commission in its report on Interchangeable Mileage Ticket Investigation, 77 Inters. Com. Rep. 200, 202, "We have repeatedly said that it is our duty to apply a statute as we find it, and that it is for the courts to determine the validity of the statute where that question arises."

In Atchison, T. & S. F. R. Co. v. State, 85 Okla. 223, P.U.R. 1922D, 450, 206 Pac. 236, this Commission prescribed reasonable rates on shipments of coal to Dewey, Oklahoma, but did not award reparation as was requested by the complainant. This question was thereafter presented to the supreme court while the matter was there pending on appeal lodged by the carriers and the court held that the matter of reparation was not dis-

cretionary with the Commission, but that it was its duty, where a shipper set out a state of facts that would entitle him to reparation under the statute, to take cognizance of such facts and determine the amount of refund, if any, such shipper was entitled to.

This decision of the court holding the determination of reparation mandatory on our part, taken together with the later decision in Missouri K. & T. R. Co. v. Dewey Portland Cement Co. *supra,* that no statute of limitation applies on reparations in this state, apparently leaves us no discretion in the matter. When a shipper has presented to this Commission the facts entitling him to reparation under the law, it is our duty to award such reparation, and for the period to which the facts show such shipper entitled thereto.

The question of conflict with interstate jurisdiction cannot be here involved for the reason, as stated, that all shipments upon which reparation is claimed, moved subsequent to two years prior to date of filing the complaint herein.

[2] Defendants question the right of this Commission to award reparation under any condition and specifically our right to award reparation herein. They apparently desire to test the law authorizing reparation, on grounds which they feel have not heretofore adequately been presented, either to this Commission or to the supreme court.

The law governing reparation is found in Chap. 10, Session Laws 1913. Section 1 of this law (§ 22, Corporation Commission Laws, 1917) provides:

"The Corporation Commission is hereby vested with the power of a court of record to determine: First, the amount of refund due in all cases where any public service corporation, person, or firm, as defined by the Constitution, charges an amount for any service rendered by such public service corporation, person, or firm, in excess of the lawful rate in force at the time such charge was made, or may thereafter be declared to be the legal rate which should have been applied to the service rendered; and second, to whom the overcharge should be paid."

The general powers and duties of the Corporation Commission, as to transportation companies, are set forth in § 18, et seq.

Art. 9, Constitution. (§ 17 Corporation Commission Laws 1917) provides, among other things, that the Commission shall be charged with the duty "of correcting abuses and preventing unjust discrimination . . . by such companies."

Sec. 34, Art. 9 Constitution (§ 16 Corporation Commission Laws 1917) provides: ". . . the legislature may, by law, from time to time, alter, amend, revise or repeal sections from 18 to 34, inclusive, of this article (9), or any of them or any amendments thereof: Provided, that no amendment made under authority of this section shall contravene the provisions of any part of this Constitution other than the said sections last above referred to or any such amendments thereof."

The question of whether the Commission by awarding reparation is making a retroactive order prohibited by law is answered by the wording of the provision of the Constitution relied upon by those who oppose the granting of reparation and by the construction which the Supreme Court has heretofore placed upon this provision of the Constitution.

Sec. 23, Art. 9, Constitution (§ 46, Corporation Commission Laws 1917), which relates only to rates involved in cases on appeal in the Supreme Court reads, in part as follows:

". . . The right of the Commission to prescribe and enforce rates, charges, classifications, rules and regulations affecting any or all actions of the Commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the Commission prescribing or altering such rates, charges, classifications, rules, or regulations shall be retroactive."

Defendants contend that the decision of the courts of other states where similar laws to ours are in effect are conclusive against the power of the Corporation Commission to award reparation. They rely upon the decisions of the courts of Virginia, Alabama, and Texas. But the law is different in these three states from ours, so far as the awarding of reparation is concerned. While our constitutional provisions relating to transportation companies, are similar to those of Virginia, that state

has a law providing in effect that the tariffs of transportation companies shall be filed as the rates of the Commission. In Texas, tariffs are filed as Texas Commission tariffs.

Our state on the other hand, as we have stated, has a law specifically directing this Commission to award reparation, where the facts justify it.

The essential difference between the laws of Virginia, Alabama, and Texas, and our law is summed up in the following quotation from the supreme court of Virginia, in the case of Mathieson Alkali Works v. Norfolk & W. R. Co. 147 Va. 426, P.U.R.1927C, 766, 779, 137 S. E. 608, 613:

"The decision in the case of Miller Mill Co. v. Louisville & N. R. Co. 207 Ala. 253, 92 So. 797, is most persuasive because of the practical similarity of the Virginia law to provisions of the Alabama law, touching the rate-making duties of the Commission in the respective states, and in view of the decision there of the vital questions under discussion here.

"Section 5525 of the Alabama Code provides that:

"No change shall be made by any common carrier in the rates, fares, and charges, . . . which have been filed, and published by it, or which are in force at the time, until the proposed changes have been submitted to and approved by an order of the Railroad Commission."

In the report in our Order No. 4054, issued in Cause No. 8342, January 5, 1928, in the case of Palmer v. Atchison T. & S. F. R. Co., we said:

"Such charges as were made by the carriers could lawfully have been assessed and collected under Supplement No. 11 to Southwestern Lines Tariff 83–C, issued May 27, 1921, unless there was an outstanding, valid, binding, and enforceable order of this Commission prohibiting such charges. We do not find such order in existence, notwithstanding the Commission has all along insisted that permission must be obtained from this Commission before any changes in the tariffs are to be made and notwithstanding the carriers generally have followed this practice."

In the foregoing case the railroad company had filed, without consent of this Commission, a tariff changing coal rates to Purcell. Complainant contended that it was entitled to reparation

because the carrier had changed the rates without applying to this Commission for permission therefor. We held that there was no valid and enforceable order prohibiting such changing of rates by the carrier.

The rates herein on pig lead, as such, have never been before this Commission. The particular rates, as applicable to pig lead, from Ottawa county points to Oklahoma City, had not prior to the complaint herein been called to our attention. Pig lead was carried on the fifth-class rates in tariffs of the railroads, on rates originally prescribed by the director general and later subjected to advances and reductions in line with the general percentage advances and reductions made by the Interstate Commerce Commission on interstate rates. But such general advances and reductions were without consideration as to the reasonableness of the individual rates, and were largely in the interest of comity in interstate and intrastate rate making. So far as pig lead was concerned, this commodity had no consideration aside from that which was given to the general scheme of rates. We had not therefore prescribed rates on pig lead as an individual commodity, or for particular movements such as those between Ottawa County points and Oklahoma City. Nor can it be contended that the filing of any tariff with the approval of this Commission constitutes the rates therein "Commission made" rates. Palmer v. Atchison, T. & S. F. R. Co. *supra.*

In Oklahoma Traffic Asso. v. St. Louis & S. F. R. Co. 129 Inters. Com. Rep. 461, the Interstate Commerce Commission had under consideration a similar complaint as to interstate shipments from Joplin, Mo., to Oklahoma City. In the interstate case, the shipments moved to the Harrison Smith Company as did the shipments herein. The Interstate Commerce Commission, as heretofore stated, prescribed the rate of 36 cents per hundred pounds from Joplin, Mo., to Oklahoma City. The shipments likewise moved over the St. Louis-San Francisco Railroad. Ottawa County points are intermediate to Joplin on shipments moving by the Frisco to Oklahoma City. At page 466, in its report the Interstate Commerce Commission said:

"We find that the rate assailed . . . was, is, and for the

future will be unreasonable to the extent that it exceeded, exceeds, or may exceed 36 cents on pig lead . . . ; That complainant Harrison Smith Company received shipments of these commodities on which it paid charges at the rate herein found unreasonable and, following Missouri Portland Cement Co. v. Director General (88 Inters. Com. Rep. 492), that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest."

In Atchison, T. & S. F. R. Co. v. State, 130 Okla. 263, 267 Pac. 253 (syllabus par. 3) it is held:

"When the interstate freight rates put into effect by the Interstate Commerce Commission are materially lower from the same length of haul on the same class of commodities than the intrastate rates made under the order of the Corporation Commission, this constitutes discrimination, and it is the duty of the Corporation Commission to remove it by readjusting the rates."

To the same effect as the foregoing, see Atchison, T. & S. F. R. Co. v. State, 85 Okla. 223, P.U.R.1922D, 450, 206 Pac. 236. The period covered by the award of reparation on the interstate shipments in the foregoing Interstate Commerce Commission Case, was limited only by the 2-year statute of limitation, from the time of filing the complaint.

We have no statute of limitations covering reparation and we cannot arbitrarily limit the period for which reparations shall run. Reparations must be awarded for the period for which the charges are declared to be illegal. It would seem that a limitation of reparations on intrastate shipments which are on the same relative basis as interstate shipments, and which would not give to the state shipper the same right to reparation as the interstate shipper secured, would be unduly discriminatory against the shipper.

We find that the rates on shipments of pig lead from Ontario and other points in Ottawa county, Oklahoma, to Oklahoma City, Oklahoma, were unreasonable and unlawful to the extent that

they exceeded 33 cents per hundred pounds on all the shipments which moved and which are shown by complainants' statement filed herein.

We further find that complainant paid and bore the charges and is entitled to the reparation herein awarded.

NEW YORK DEPARTMENT OF PUBLIC SERVICE.
STATE DIVISION, PUBLIC SERVICE COMMISSION.

CUSTOMERS FOR GAS IN OCEANSIDE, TOWN OF HEMPSTEAD

v.

NASSAU & SUFFOLK LIGHTING COMPANY et al.

[Cases Nos. 5479, 5480.]

Rates — Reasonableness — Service by new company.

1. The complaints of persons notified that they would be served by a new utility at higher rates after a certain period were dismissed as against the new company where no question was raised concerning the reasonableness of the rates to be charged by the latter, p. 448.

Service — Substitution of utilities — Antiduplication agreement — Gas.

2. A gas company quitting a certain area under an antiduplication agreement with another company already in that section with the approval of the Commission was not obliged to continue service to those customers already attached to its mains notwithstanding the fact that such patrons would experience a rate increase when served by the other company, p. 448.

[April 1, 1929.]

COMPLAINT of certain gas customers against proposed charges for service; complaint dismissed.

Appearances: Irving D. Tunison, Oceanside; H. J. Buchan, Oceanside; Charles G. Kane, Oceanside, in behalf of the Civic Association, Oceanside; L. N. Cooper, Oceanside; Mrs. J. M. Doane, Oceanside; Sanford & Frost, New York, Attorneys for Nassau & Suffolk Lighting Company and Queens Borough Gas & Electric Company; William L. Ransom, Jacob H. Goetz, and Edward J. Crummey of Counsel, New York.

Van Namee, Commissioner: The above cases are closely related and were heard together, the hearing having been had at the New York office of the Commission on March 21, 1929, the appearances being as above stated.

The complaints are against the Nassau & Suffolk Lighting Company and the Queens Borough Gas & Electric Company, hereinafter referred to respectively as the "Nassau Company" and the "Queens Borough Company."

The complaints are made by consumers of gas, residing in that part of Oceanside which lies east of Powell Creek. Oceanside is an unincorporated hamlet in the town of Hempstead, Nassau county.

While it appears that both the Nassau company and the Queens Borough Company have franchises from the town of Hempstead covering all this territory, it also appears that for many years there has been at least a tacit understanding between these companies that the Nassau Company should serve the territory to the east of Powell Creek and the Queens Borough Company should serve the territory to the west of Powell Creek. These two corporations seem to have treated this creek as constituting a natural boundary. Although the record indicates that some sixteen or seventeen years ago the Queens Borough Company crossed to the east side of the creek and began to furnish service to a few customers, an agreement soon was reached between representatives of the two companies the result of which was that no further extensions were made at that time by the Queens Borough Company in that territory.

In 1926, as the result of what is described as "warfare" between these two companies, the Queens Borough Company made additional extensions east of Powell Creek and took on additional consumers. Before this warfare had gone very far, however, the capital stock of the Nassau Company passed into the hands of interests controlling the Queens Borough Company, and the warfare ceased. It is estimated that at that time the Queens Borough Company had about 130 or 150 customers in this territory, and the Nassau about 1,000. Referring to the Queens Borough customers in this territory, it is estimated that at least three-quarters of them were persons who had only recently

become customers and had been taken on during the period of this gas war.

[1, 2] Both companies having passed into the control of the same interests, and the warfare having ceased, and it appearing that as a result of this warfare there was to a certain extent a duplication of mains and services in the territory east of Powell Creek, and that there was also a disparity in the rates charged by the two companies in that territory (the rate of the Queens Borough Company being $1.30 per thousand cubic feet and the rate of the Nassau Company being $1.75 per thousand cubic feet), application was duly made to the Commission for the consent of the Commission to the acquisition by the Nassau Company of all the mains and services of the Queens Borough Company east of Powell Creek and east of a line beginning at the intersection of Powell Creek with Atlantic avenue and extending northerly to its intersection with the northerly boundary of the town of Hempstead. This application was granted on July 19, 1928 (Case No. 4866), and thereafter the properties of the Queens Borough Company lying east of Powell Creek were transferred to the Nassau Company. Thereafter and on or about November 30, 1928 those persons residing east of Powell Creek who had been getting gas from the Queens Borough Company were notified that on and after January 1, 1929 they would be served with gas by the Nassau Company, and since January 1, 1929 the bills rendered to them for gas supplied have been rendered by the Nassau Company. The fact that the bills thus rendered were at the rate of $1.75 per thousand cubic feet, instead of $1.30 as charged by the Queens Borough Company, is what has caused the present complaints.

In so far as these complaints have reference or may be deemed to have reference to the rates of the Nassau Company, I think that they must be dismissed, for the reason that on the hearing herein no question was raised as to the reasonableness of the rates charged by the Nassau Company.

The only question in the case appears to be whether the Commission should require the Queens Borough Company to continue to furnish gas east of Powell Creek at $1.30 per thousand cubic feet. The only way in which this could be done, so far

as previous consumers are concerned, would be by revoking the order of July 19, 1928 in Case No. 4866 consenting to the sale of the mains and services of the Queens Borough Company, or by requiring the Queens Borough Company to lay new mains in this territory to serve these consumers.

I do not think that the request of complainants, in either form, should be granted. The order of the Commission in Case No. 4866 was made only after very careful consideration and was based upon a very extended petition which the two companies filed with the Commission and in which they stated various facts which in their opinion made such a transfer desirable and which made it appear in the public interest that the Queens Borough Company should not undertake to continue to serve customers in the area east of Powell Creek in competition with the Nassau Company. If the Queens Borough Company were required to continue to serve these consumers on the east side of Powell Creek, at $1.30 per thousand cubic feet of gas sold, as against $1.75 charged by the Nassau Company, the result would naturally be that a demand would be made for additional extensions all through that territory, where the Nassau Company has already got its mains installed and is serving consumers with gas. The Commission does not believe that it would be in the public interest, or in the interest of the great majority of customers, that the Queens Borough Company which operates in one of the boroughs of the city of New York and then in the intervening territory up to Powell Creek, should be required to go ahead and extend its lines and render service in the territory here in question. That was a consideration which was taken into account at the time the question was before the Commission as to whether it was necessary and convenient for the public service and in the interest of the great majority of customers for competition to end in this territory and for these systems to come under common ownership. The Commission was obliged to take into consideration what the result would be as to rates and service and other matters if both the Nassau Company and the Queens Borough Company, each with franchises throughout the town of Hempstead, including this Oceanside region, were to be compelled or required to go ahead and

extend their lines over this area in competition with each other. The companies contend that for this area east of Powell Creek, it is recognized that a rate of $1.75 is reasonable. It does not appear that the complainants contest this proposition, but nevertheless their position seems to be that as long as the Queens Borough Company got into that area with the $1.30 rate it should be compelled to remain there and continue to furnish gas at that figure.

I do not think that the position of the complainants is a reasonable one. If the Queens Borough Company were compelled to remain in that territory the natural result would be, as before stated, that demands would be made for further extensions. The companies contend that it would not be in the public interest that the territory which they regard as $1.75 territory should be attached to and incorporated into the service area in which the company is doing business under a $1.30 rate. The companies contend also that if the proper rate for the territory east of Powell Creek is $1.75 and if the Queens Borough Company were required to go in there and furnish gas, it might be necessary to classify the territory and to establish for the Queens Borough Company a rate of $1.75 in this territory. They contend that if this were not done, and if the Queens Borough Company could not afford to continue to serve this territory more cheaply than could the Nassau Company, the result would be that the customers of the Queens Borough Company in other localities would have to pay a higher rate than $1.30 in order to enable customers of the Queens Borough Company in this part of Oceanside east of Powell Creek to get gas for less than $1.75. Wthout passing specifically upon these various contentions, I believe that to compel the Queens Borough Company to go into this portion of Oceanside and furnish gas there would result in an unsound and uneconomic duplication of investment and effort and expense, and the fact that under the circumstances disclosed in the record in this case the Queens Borough Company did for a time furnish service to a few customers east of Powell Creek, in competition with the Nassau Company, could not warrant now a compulsory continuance of that situation.

Counsel for the companies contends that the only issue now tendered in the rescission of the order made by the Commission on July 19, 1928 in Case No. 4866, and that said order is not open to collateral review or attack in either of the cases now before the Commission, namely, Cases Nos. 5479 and 5480. I do not think that it is necessary to pass upon that question, as I prefer that the decision of the Commission herein should be entirely upon the merits.

For the reasons hereinabove stated, I think that the complaints herein should be dismissed, and I submit herewith drafts of orders for that purpose. [Orders omitted.]

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

J. WALTER BUTCHER FOR ASBURY-CARLTON HOTEL

v.

NEW JERSEY BELL TELEPHONE COMPANY.

Discrimination — Payment — Requirement of deposit.

1. The requirement of a deposit in advance of supplying service from some of the customers of a public utility and the supply of service to others without such requirement is not, *ipso facto*, a discrimination such as is prohibited by law, p. 453.

Discrimination — Requirement of customer deposits.

2. For an unreasonable and unlawful discrimination to exist in the requirement of customers' deposits it should appear that the conditions with respect to the customers required to deposit, are identical with the conditions with respect to those not so required, p. 453.

Discrimination — Extension of credit — Deposit.

3. A company might without improper discrimination extend credit to those who pay their bills promptly and withhold credit from those who do not do so, p. 453.

Payment — Failure to pay bills promptly — Hotels.

4. A telephone company was held to be justified in requiring a certain seasonal hotel to post a deposit to secure the payment of its toll bill notwithstanding the fact that other hotels were not required to do so, where such hotel had not been prompt in its previous payments, p. 453.

[March 14, 1929.]

COMPLAINT of a hotel operator against a telephone company because of the requirement of a deposit to secure payment of a toll bill; complaint dismissed.

Appearances: Frederick W. Nixon for New Jersey Bell Telephone Company; J. Walter Butcher for Asbury-Carlton Hotel.

By the **Board**: This matter comes on to be heard by reason of the fact that the respondent has requested a deposit of $150 as a condition precedent to furnishing all-year telephone service to the Asbury-Carlton Hotel.

The company's General Exchange Tariff, on file with the Board (under § 1, original sheet 1) contains the following pertinent rule:

"Applicants for telephone service and facilities, whose financial responsibility is not a matter of general knowledge or who are not connected in a substantial way with a firm, corporation, or other concern of established credit. . . .

"or any subscriber may also be required to deposit a sum up to an amount equal to either the charge for two months' local service or the charge for the estimated toll messages during a like period or both."

The complainant contends that the credit of the Asbury-Carlton Hotel is established and that the rule should not apply to it. Several hotels having similar service are named which are not required to make deposits. Two character witnesses called to establish the credit of the complainant hotel company, testified on behalf of the latter; one a dealer in building supplies whose indebtedness is secured by a mortgage on the hotel property and another who is an officer of the company.

The respondent contends that the two other hotel companies referred to have established their credit standing beyond all reasonable doubt; that the complainant has not done so; that the rule, therefore, should be applied; and that the amount of the deposit is reasonable, in view of the fact that, in prior seasons, the complainant incurred monthly toll bills amounting to $135.67, which together with the regular monthly rental of $71.25 for a year-round service now desired, would aggregate a

monthly total of $206.92, an excess in one month of $56.92 over the deposit requested.

Testimony was also submitted showing that under *seasonal* service for the year 1928, the complainant had deposited $200 to secure payment of bills and that in no month during said season had the bills for service been paid in accordance with the respondent's rules.

The right of a public utility to require a deposit, reasonable in amount, in advance of supplying service is well established. The Board, in a case where this question arose, stated the following:

"A public utility is bound within its legal competence and up to the limit of its physical equipment to afford service to all who apply conformably to the reasonable requirements imposed by the utility. The public utility cannot at its option refuse to render service. It is thus debarred from exercising the choice which the ordinary merchant may exercise of declining to serve would-be customers. As an offset to this peculiar obligation, and to protect public utilities from bad debts which might otherwise be unavoidable, public utilities are allowed in some states by statute to require a deposit or advance payment. In some states water rents or other utility services are made a lien upon the property served. This is the statutory provision in this state as regards water rents where the municipality serves the consumer. These considerations requiring the utility to serve all applicants seem to establish the reasonableness of a rule which a utility may impose requiring of its customers advance deposits to secure bills for service to be rendered." Re Easton Gas Works, 2 Ann. Rep. N. J. P. U. C. 393, 396.

The Board, however, does not regard public utilities as being entitled to require deposits, in all cases, of those who apply for service. Such a requirement, without regard to the conditions under which service is rendered and the credit standing of the customers, would be unreasonable.

[1–4] The requirement of a deposit in advance of supplying service from some of the customers of a public utility and the supply of service to others without such requirement is not, in the judgment of the Board, *ipso facto,* a discrimination such as

is prohibited by law. For an unreasonable and unlawful discrimination to exist, it should appear that the conditions are identical. In the case before us, it does not appear that the conditions, with respect to the supply of service by the telephone company to the complainant, are identical with the supply to the other hotels referred to. It does not appear the others delayed payment of the company's bills. Without improper discrimination, the company might extend credit to those who pay their bills promptly, and withhold credit from those who do not do so. Material delay in payment of bills might lead, not unreasonably, to the company's questioning whether the delay would not be further prolonged and eventually result in failure to pay an account due. It seems to the Board this case should be decided, not upon testimony submitted by witnesses called by the complainant as to his character, but upon the record of his dealings with the telephone company. The question at issue is whether the relations of the complainant with the company have been such, with respect to payment of bills, when rendered, as to justify an order that the company waive requirement of a deposit, payment which has been heretofore a condition of supplying service. The record is not such as to justify such an order. The amount of the deposit requested appears to be reasonable.

The Board finds and determines that the requirement of a deposit of $150 is not, under the circumstances, an unjust or unreasonable discrimination and the complaint, therefore, is dismissed.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

CITY OF PASSAIC

v.

PUBLIC SERVICE ELECTRIC & GAS COMPANY.

Evidence — Duplicate copies — Income tax reports.

1. The Commission refused to issue a subpoena directing a utility to produce copies of its income tax reports, where such copies if produced would not be best evidence, and would not be admissible over the objection of the utility in view of the original return having already been filed with the Federal Government, p. 455.

P.U.R.1929C.

Evidence — Public record — Income tax return.

2. Notwithstanding the fact that returns upon which income taxes have been determined constitute public records, they are open to inspection only upon the order of the President of the United States, and under rules and regulations prescribed by the Secretary of the Treasury, p. 455.

Procedure — Procurement of income tax returns.

3. The proper procedure to obtain access to the income tax returns filed with the United States Government by a utility is to have the governor of the state apply to the proper officers of the United States Government under rules and regulations prescribed by the Secretary of the Treasury and approved by the President, p. 457.

[May 14, 1929.]

PETITION of a city for a subpoena duces tecum requiring a utility to produce copies of its Federal income tax reports; denied.

Appearances: Joseph J. Weinberger, for city of Passaic; C. S. Straw, for Public Service Electric & Gas Company.

By the **Board**: The city of Passaic requests the Board to issue a subpoena duces tecum under § 27 of the Public Utility Act requiring the Public Service Electric & Gas Company to produce copies of its income tax reports filed with the United States Government for the years 1925, 1926, 1927, and 1928 for use at hearings in this matter.

[**1, 2**] It is to be noted that the application is to produce copies of income tax reports. Such copies if produced are not the best evidence and would not be admissible as evidence over the objection of the company. While the returns upon which income tax has been determined constitute public records, they are open to inspection only upon the order of the President of the United States and under rules and regulations prescribed by the Secretary of the Treasury and approved by the President.

Section 2055 of Title 26 of the United States Code Annotated; 45 Stat. 809; Internal Revenue Act of 1928, provides that returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as made under Title 2 of the Internal Revenue Act of 1926 which provides:

"Sec. 257. (a) Returns upon which the tax has been determined by the Commissioner shall constitute public records;

but, except as hereinafter provided in this section and § 1274, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President. Whenever a return is open to the inspection of any person, a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy."

The Internal Revenue Act of 1924, § 257 (a) (§ 1024 of Title 26 of United States Code Annotated) provides:

"Returns upon which the tax has been determined by the Commissioner shall constitute public records; but, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President; Provided, that the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate; or a special committee of the Senate or House, shall have the right to call on the Secretary of the Treasury for, and it shall be his duty to furnish, any data of any character contained in or shown by the returns or any of them, that may be required by the committee; and any such committee shall have the right, acting directly as a committee, or by and through such examiners or agents as it may designate or appoint, to inspect all or any of the returns at such times and in such manner as it may determine; and any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and House, as the case may be: Provided, further, that the proper officers of any State may, upon request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe: Provided, further, that all bona fide shareholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and its subsidiaries. Any shareholder who, pursuant to the provisions of

this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both."

[3] It is to be noted that the procedure to obtain access to the returns is to have the governor of the state apply to the proper officers of the United States Government, under rules and regulations prescribed by the Secretary and approved by the President, for permission to have access to the return of the corporation or to an abstract of the same.

In Boske v. Comingore, 177 U. S. 459, 44 L. ed. 846, 20 Sup. Ct. Rep. 701, which construes the regulations of the Treasury Department governing the publication of income tax returns, it was held that a collector might refuse the commands of a state court to produce his records or copies.

The rules of the Board require the filing of annual reports on the part of all public utility companies, and the Board is of the opinion that these reports contain all of the information which is desired to be produced by the petitioner. They are matters of public record and available for inspection by the petitioner. The Board, however, leaves the question of the production of testimony for the petitioner to determine.

Inasmuch as the Federal Statute and the rules and regulations of the Internal Revenue Department make the income tax return public record, to be available for public use only in the manner prescribed, the Board finds that it would not be legally effective to require the issuance of a subpoena to produce copies in the manner requested by the petition filed for the issuance of the subpoena, but rather to require the applicant to proceed in the manner prescribed by law for the production of the original. The Board, therefore, denies the application without prejudice to the rights of the petitioner to make application for the production of the income tax returns of the company in the manner prescribed by the Federal Statute and rules and regulations heretofore cited.

P.U.R.1929C.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

CITY OF PITTSBURGH et al.

v.

EQUITABLE GAS COMPANY.

[Complaint Docket Nos. 4538 et al.]

Valuation — Necessity for finding — Gas utility.

A finding of fair value is not necessary in every case involving the fixing or rates provided the record and the report of the Commission support the conclusion that some reasonably scientific method of arriving at the decision has been used, and where a finding of fair value is not necessary or useful in arriving at such conclusions, it may be dispensed with.

[April 16, 1929.]

PETITION of a city for rehearing of Commission order fixing rates of a gas utility; petition for rehearing dismissed.

By the Commission: These matters come before the Commission at this time upon petition of the city of Pittsburgh for rehearing and the answer of respondent gas company thereto.

On November 20, 1928, P.U.R.1929A, 340, the Commission issued its report and order on the complaints of the city and others against two successive tariffs filed by the respondent by which rates for natural gas in Pittsburgh and vicinity were increased. In that report the Commission found that the rates under attack were not unjust or unreasonable, and dismissed the complaints.

An examination of the petition for rehearing discloses that the petitioner does not desire to present further evidence or to obtain a consideration of facts not brought out or considered in the proceedings, but that its real purpose is to secure from the Commission a series of findings upon the various elements entering into a determination of fair value and forming the basis of the decision that the rates under attack are not unreasonable.

In its report the Commission pointed out that a series of engineering conferences had been held at which engineers for both complainants and respondent had agreed upon reproduction cost

estimates of respondent's physical property upon several price bases, but that they had been unable to agree as to the intangible items of going cost and cost of financing; as to the items not agreed upon the respective contentions of both parties were discussed at some length in the report. The positions taken by the parties as to the value of gas producing property held under lease and its inclusion in the rate base were also set forth and discussed. Their contentions as to the extent of accrued depreciation in respondent's property were also considered. Their claims as to the amount to be allowed for annual depreciation and depletion of property were set forth, and a definite statement made that as to natural gas property with a declining production an annual depreciation allowance, based upon the annual production of gas therefrom, appeared to best satisfy the requirements.

The company's claim as to the value of its property is stated in the report as being between $85,600,000 and $88,600,000, as of December 31, 1923, to which additions up to December, 1926, in the amount of $3,478,000 are to be added. The statement of operating and other expenditures for the years 1925 and 1926 is set up, together with the net return yielded by the rates under attack, with the statement that such return amounts to 7 per cent on $43,000,000 and $40,000,000, respectively. The Commission pointed out what the difference in the several contentions of the parties amounted to in dollars, and the definite statement is made at the close of the report that "after a careful study of the record the Commission is convinced that no reduction in these estimates could reasonably be made sufficient to warrant it in finding that the net return would be excessive."

This Commission has previously taken the position, as have also the appellate courts of this state, that findings of fair value are not necessary in every case provided the record and the report of the Commission contain sufficient data that some reasonably scientific method of arriving at the decision appears. New Street Bridge Co. v. Public Service Commission, 271 Pa. 19, P.U.R.1922A, 404, 114 Atl. 378, and Philadelphia v. Public Service Commission, 83 Pa. Super. Ct. 8. The points alluded to in the Commission report indicate the basis of the decision;

this meets all the necessary requirements. Matamoras Citizens Water Co. v. Public Service Commission, 86 Pa. Super. Ct. 152.

The facts of record in this case are such that a finding of fair value of the company's property, used and useful in the public service, would not have been necessary or helpful in arriving at the conclusion. Such being the case it seemed desirable to refrain from making findings or determinations which were not essential to, and which, if made, would not alter the decision. The petition for rehearing discloses nothing which causes us to change this attitude. Therefore, the petition will be dismissed and a proper order issued.

Note.—A similar disposition was made by the Pennsylvania Commission in the case of Pittsburgh v. Peoples Nat. Gas Co. Complaint Docket Nos. 4542 et al., April 16, 1929.

GEORGIA SUPREME COURT.

GEORGIA POWER COMPANY

v.

CITY OF DECATUR.

[No. 6849.]

(— Ga. —, — S. E. —.)

Service — Abandonment — Effect of franchise — Street railway.

A street railway company bound by a valid contract, based on valuable consideration to serve in a city at a fare of 5 cents, was not permitted to surrender its franchise and tear up its tracks, notwithstanding the admitted fact that it could not operate profitably at that rate, which the Commission had no power to change.

[April 15, 1929.]

APPEAL by a street railway company from the decision of a lower court refusing to permit it to surrender its franchise and to discontinue service; appeal of lower court affirmed.

Stark, J.: This suit had its origin in the decision of the city of Decatur in 1925 to pave its streets in accordance with an act of the legislature of Georgia, and to assess certain of the expenses of paving against the street railway.

On July 9, 1925, plaintiff in error notified the city of Decatur that unless it was relieved of the burden of this paving expense, it would be "willing to surrender to the city of Decatur the franchise for this line and remove the tracks from the streets." The city refused this proposition. On September 26, 1925, a communication was addressed to the mayor and Commissioners of Decatur, stating, among other things, that the "Georgia Railway & Power Company, as the lessees thereof, concurring herein, hereby formally surrenders the said permits and franchises granted by the town and city of Decatur for the construction and operation of the said electric railway hereinbefore referred to." Attached to this notice was a certified copy, or copies, of the resolutions by the board of directors of the Georgia Railway & Electric Company and the Georgia Railway & Power Company. The notice recited when the discontinuance would be put in operation.

On September 28, 1925, the city of Decatur by proper resolution refused to accept the surrender of the said franchise or permit, tendered to it by the street railway companies, as it would not be to the interest of the city to accept the same. The city of Decatur then filed this equitable petition against the Georgia Railway & Electric Company and the Georgia Railway & Power Company to prevent the abandoning of these lines, and setting up the contract made and entered into between the city and said street railway companies.

Pending this litigation the Georgia Railway & Electric Company and the Georgia Railway & Power Company have been consolidated and merged into the Georgia Power Company. In further discussion of this case we will refer to the ordinance of March 3, 1903, of the city of Decatur and the contract entered into in pursuance thereof, dated April 1, 1903, as if made with the Georgia Power Company instead of Georgia Railway & Electric Company and Georgia Railway & Power Company.

It would seem that every attack that could be made upon this contract of April 1, 1903, has been made by the Georgia Power Company. When it was before this court the last time, Georgia R. & Power Co. v. Decatur, 153 Ga. 329, 331, 111 S. E. 911, it was stated by Wright, judge: "While the plaintiff in error now insists that some ten distinct points of attack upon the validity

of the contract are made in the present appeal that were not made in the mandamus case (149 Ga. 1, P.U.R.1919D, 546, 98 S. E. 696, 5 A.L.R. 1) it is not and can not be insisted that the identical questions of law were not involved upon the first hearing of the interlocutory injunction (152 Ga. 143, 108 S. E. 615) as are now involved upon this second appeal."

We have examined the original record in this court when the case was here before that we might again have before us the "ten distinct points of attack upon the validity of the contract" referred to in the decision, and every controlling issue was distinctly made and passed upon in that case that is made in the case now before us, unless it be the offer to surrender back to Decatur the franchise or permit. The Georgia Power Company in that case set up the expiration of the charter of the Collins Park & Belt Railroad Company. In paragraph 37 of the company's answer, it said: "Defendants show and allege that said so-called contract is indefinite as to the time it is to run; said provision contains no definite or fixed time during which a fare of 5 cents is to be charged, and because of said indefiniteness said so-called contract provision is revokable on notice, and as shown by exhibit 'D' attached to the petition, defendants have served notice on petitioner terminating said contract on the 20th day of October, 1920, and so-called contract, if it ever had any force and effect, is now terminated."

The company further set out in its answer and cross bill a copy of the order of the Railroad Commission of the state of Georgia, dated September 22, 1920, P.U.R.1921A, 165, 182, among other things stating: "The 5-cent fares now in effect on the main Decatur . . . lines, contracted for under vastly different conditions than now exist, are not fairly compensatory, and as to the patrons of the company on other routes, and on intermediate territory on these routes, are discriminatory. This Commission is without power to increase them."

Defendants further allege that provisions or contracts, with reference to rates or fare, being with reference to a legislative or police power, must be for a definite term not grossly unreasonable, and that where the provisions as to rates are indefinite it is revokable on notice under changed conditions.

The validity of said contract and the terms thereof have been upheld by this court three different times, and by the Supreme Court of the United States. Georgia R. & Power Co. v. Railroad Commission, 149 Ga. 1, P.U.R.1919D, 546, 98 S. E. 696, 5 A.L.R. 1; Georgia R. & Power Co. v. Decatur, 152 Ga. 143, 108 S. E. 615; Georgia R. & Power Co. v. Decatur, 262 U. S. 432, 438, 67 L. ed. 1065, 1074, P.U.R.1923E, 387, 43 Sup. Ct. Rep. 613.

Now that the Georgia Power Company can no longer attack the contract, it proposes to abrogate the terms thereof by surrendering its permit or franchise to the city of Decatur, and tear up and remove its rails, and the notice already referred to was given the city of Decatur by the Georgia Power Company of its intention to surrender the franchise and cease operation. It was then that the present injunction was filed by the city of Decatur against the Georgia Power Company.

We do not deem it necessary in this case to go back of the litigation between the city of Decatur and the power company in 1902, but the fact of said litigation and the terms of the settlement of the same, that was finally consummated in the ordinance of March 3, 1903, and the contract of April 1, 1903, are germane and very material to the decision of this case.

In the negotiations leading up to the settling of the litigation, and the contract made in pursuance thereof, the power company was "urging as a reason for such action by mayor and council that, if allowed to take up and discontinue said line known formerly as Atlanta Railway Company, said Georgia Railway & Electric Company could and would give to the citizens of said town of Decatur better street car facilities upon another parallel line of street railway between the city of Atlanta and the town of Decatur owned by said Georgia Railway & Electric Company."

The terms of this ordinance and contract in pursuance thereof show that it was to be a permanent operating contract between the street railway company and the city of Decatur. In § 2 of said ordinance and contract it is stipulated that the Georgia Railway & Electric Company, its successors and assigns, whether by contract or by operation of law, shall be bound to do the following things: . . . "To never charge more than 5 cents for any

fare." And then in paragraph 4, providing for the double tracking in the city of Decatur with reference to this loop, that, "the loop already described in the town of Decatur being considered a double track;" and further stipulating: "Which said double track, when completed, shall be maintained in a substantial, safe, and expeditious manner, and shall be operated with cars and rolling stock kept in a safe and comfortable condition. Permission to construct said double track in the town of Decatur is hereby granted."

To allow the plaintiff in error to surrender its franchise and permit and tear up its track would destroy the very terms of the contract itself. It is not so much the franchise that we are dealing with, but the specific contract made in pursuance thereof. The terms of it are that the company will "never" charge more than 5 cents for one fare, and that it would maintain the track in a substantial and safe manner and operate it with rolling stock.

When this contract was before the Supreme Court of the United States in 262 U. S. 432, 438, 67 L. ed. 1065, P.U.R. 1923E, 387, 392, 43 Sup. Ct. Rep. 613, that Court said with reference to the duration of this contract that, "this contract would remain effective until there should be conflicting legislative action."

Under the Constitution, Code § 6448, all that towns and cities have to give to the construction of street passenger railways within the limits of the same is the consent of the corporate authorities.

Regardless of whether the assignments of error in the bill of exceptions raises the question of the expiration of the charter of the Collins Park & Belt Railroad Company, so it can be considered by this court, it is clear that the city of Decatur, under said contract, could not deny that it had given its consent to the construction of this street railway system upon its streets. The consent, if not expressly given in this contract, is necessarily implied. All the permit necessary to the use of the streets of Decatur by the Georgia Power Company is either expressly granted or necessarily implied from the terms of said contract. This permit was given to the predecessor of the plaintiff in error.

The line sought to be abandoned in the city of Decatur is a part of a large street railway system operated by the Georgia Power Company, and the company seeks to abandon the part of this line in Decatur. This, under the terms of its contracts, it cannot do. Fort Smith Light & Traction Co. v. Bourland, 267 U. S. 330, 69 L. ed. 631, P.U.R.1925C 604, 45 Sup. Ct. Rep. 249.

The case of Borris v. Atlanta Northern R. Co. 160 Ga. 775, 129 S. E. 68, if it is authority at all upon the controlling question in this case, does not strengthen the position of the plaintiff in error. The court in that case quoted approvingly what was said in Coffee v. Gray, 158 Ga. 218, 225, 122 S. E. 687, as follows: "Apart from statute or express contract, people who have put their money into a railroad are not bound to go on with it at a loss, if there is no reasonable prospect of profitable operation in the future." But in the instant case it appears that there was an express contract, and as a part of the consideration of that contract the railway company was permitted to tear up the track of another street railway which was then serving the city of Decatur and would have continued to serve it. Bullock v. Florida ex rel. Railroad Commission, 254 U. S. 513, 65 L. ed. 380, P.U.R.1921B, 507, 41 Sup. Ct. Rep. 193; Brooks-Scanlon Co. v. Railroad Commission, 251 U. S. 396, 64 L. ed. 323, P.U.R. 1920C, 579, 40 Sup. Ct. Rep. 183.

The trouble with the plaintiff in error is that it has made an "express contract" with Decatur not to charge more than 5 cents for one fare. We can take judicial cognizance of the deflation in the value of the dollar as contended by plaintiff in error, but how can that help the Georgia Power Company under the terms of its contract?

And the Supreme Court of the United States said at p. 393 of P.U.R.1923E, (262 U. S. 432) with reference to this rate contract: "The contract being valid, we are not concerned with the question whether the stipulated rates are confiscatory." The parties having entered into an express contract as to what the fare should be, it is immaterial whether it is confiscatory or discriminatory.

Having held that according to the ordinance of the city of

Decatur of March 3, 1903, and the express contract in pursuance thereof entered into April 1, 1903, that the Georgia Power Company cannot surrender its franchise or permit, and abandon its line and tear up the tracks from the street, the other questions involved in this case were decided when this contract was before the court in Georgia R. & Power Co. v. Decatur, 153 Ga. 329, 111 S. E. 911.

Judgment affirmed.

Except Presiding Justice Beck, all of the Justices of the Supreme Court were disqualified to preside in this case. Their Honors, W. W. Stark, William E. H. Searcy, Jr., James Maddox, and I. H. Sutton, Judges of the superior courts were designated by the Governor and presided in place of the disqualified Justices. The Presiding Justice and all of the Judges concur in the judgment.

NEBRASKA STATE RAILWAY COMMISSION.

RE PIONEER BUS LINE.

[Application No. 7669.]

Valuation — Security issues — Automobiles.

1. The Commission recognized the value of service rendered in promoting a motor bus business, advertising, and other efforts attempting to create a going concern as a matter that might be properly capitalized, subject, however, to reasonable limitations, p. 468.

Security issues — Amount of capitalization — Automobiles.

2. The fact that money has been invested is not all conclusive in determining the amount of value for capitalization purposes in the authorization of security issues, p. 469.

Security issues — Transfer of property — Automobiles.

3. The Commission, in authorizing a security issue for a motor utility, gave the authority upon the express condition that no stock should be issued and sold by the corporation until a bill of sale, transferring all properties held by an individual, should be made to the corporation, p. 470.

Security issues — Amount of discount — Automobiles.

4. The Commission permitted stock issued by a motor utility to be sold in a block at not less than 85 where, owing to the small amount

of the issue and the questionable success of the venture, securities could not be disposed of at a higher price, but the order provided that not less than twelve out of twenty-five shares should be sold for cash, p. 470.

[March 19, 1929.]

APPLICATION of a bus company for authority to issue securities; granted with modifications.

Appearances: Mrs. Ida N. Bartunek, O'Neill, for the applicant; B. E. Forbes, Chief Engineer, and Walter V. Huston, Bus Clerk, for the Commission.

Curtiss, Chairman: This application is presented by Pioneer Bus Line of O'Neill, a Nebraska corporation, for authority to issue and sell $10,000 of its stock. Hearing upon the application was held at Commission offices, March 8, 1929.

Applicant proposes to operate bus lines between Grand Island and O'Neill, O'Neill and Sioux City, O'Neill and Valentine, and Valentine and Chadron. Busses have been previously operated over these routes by Mrs. Ida Bartunek, an individual, as follows: O'Neill to Sioux City, distance of approximately 135 miles, from July 3, 1928, to January 3, 1929; O'Neill to Valentine, distance of approximately 153 miles, from July 3, 1928, to January 3, 1929; Valentine to Chadron, distance of approximately 152 miles, from July 3, 1928, to January 3, 1929; O'Neill to Grand Island, a distance of approximately 148 miles, from January 1, 1928 to January 3, 1929. A portion of the O'Neill—Grand Island route has been operated continuously since January, 1928, i. e., from Grand Island to Bartlett. In the conduct of this bus business four sedan automobiles, consisting of two Buicks, a Hudson, and a Nash, have been used.

It is proposed to turn over to the corporation all assets, tangible and intangible, including busses and such good will and going concern value as now exists in the above named properties operated by Mrs. Bartunek. In exchange for these properties, Mrs. Bartunek contemplates taking stock of the corporation.

Having in mind the Stock and Bonds Act, the Commission must find, if this stock is to be authorized, that it is "necessary for the acquisition of property, the construction, completion, extension, or improvement of facilities, or for the improvement

or maintenance of its service, or for the discharge or lawful refunding of its obligations," and that, in the Commission's opinion, "the use of the capital to be secured by the issue of such stock, bonds, notes, or other evidence of indebtedness, is reasonably required for the said purposes of the corporation."

This brings the Commission to a discussion of the value of the property which is to be acquired by the corporation and against which securities are to be issued. The only tangible property which comes into the possession of the corporation, is the busses. The cars are all seven-passenger sedans. The Nash was bought new at a cost of $2,300. The two Buicks were bought secondhand, each of them having been run but a few hundred miles, at a cost of $1,500 each. The Hudson was also secondhand, had been run but a few hundred miles when purchased, and cost $1,600. Witness Bartunek was unable to advise as to the exact miles on the used cars at the time of purchase, but stated that they were all in splendid condition. She also stated that the cars had been well maintained, each of the drivers being a mechanic himself, and that they were now in serviceable condition and could be operated for many thousand more miles. The total original cost of the cars was $6,900. Against them there is still an obligation of $1,200. Having in mind the approximate number of days they have been driven and the mileage per day, there has been not less than 30,000 additional miles put on each car under present ownership. It is probable that they are not worth much in excess of the obligations against them.

No money was spent in the securing of franchise rights in the cities and villages through which the busses are routed.

[1] Applicant, however, stresses particularly the good will and going concern value. Witness Bartunek states that she has devoted her undivided attention, during the months when the busses were being operated, to building up the business. Each community was personally visited and its citizens urged to use the bus. As a result of such effort, it was pointed out that the revenue realized each month increased constantly until traffic was disturbed by serious drouth conditions in certain portions of the territory served, and a general "flu" epidemic. For these reasons and these only, it is claimed, traffic became so reduced

as to make necessary the abandonment of the busses as above set forth during the winter months. Applicant makes very generous claims of value for services rendered in promoting the business, advertising, and other effort necessary in making the approximately 600 miles of daily operation, serving something like fifty towns, a going concern. The Commission recognizes this service as a necessary effort in the establishing of a bus business, and a thing of value which can properly be capitalized, subject, however, to reasonable limitations.

[2] Witness Bartunek stated that she personally had put into the business in excess of $10,000 of her own money. Having actually put this money into the business, it was her thought that it was evidence sufficient to justify the request for authority to issue capital stock in an equivalent amount. The Commission cannot adopt this theory. The fact that money has been invested is not all conclusive in determining the amount of value for capitalization purposes.

The Commission cannot justify an authorization of stock in amount $10,000. It feels that there is no such value attached to the property, tangible and intangible, which is to be passed to the corporation. Furthermore, it is skeptical as to the possibility of the lines in question being made paying lines in the immediate future. Certain of the territory served is sparsely settled. Continuous and certain service, because of bad road conditions and unfavorable weather during periods of the year, is difficult to render at best. The Commission knows of no regular heavy traffic between any of the points served. The experience of Mrs. Bartunek, in the months she has operated, has not been a happy one financially, nor is there anything in it that augurs success for the future. It appears to the Commission to be a highly speculative venture.

Witness Bartunek is highly optimistic of the future. She is confident that the different communities served will rally to the support of the bus industry and, that with the pioneering which she has done, it will immediately prosper and succeed. She points out the rather limited passenger train service across Nebraska from Chadron to O'Neill and the entire absence of pas-

senger train service connecting directly the towns of O'Neill and Grand Island. She stated that the citizens of the towns and villages through which the lines pass are clamoring for this service; that they are so intent upon the service that in instances they have volunteered to purchase stock that the busses may continue to run.

[3] The Commission does not feel that its judgment should be substituted entirely for that of others who may be willing to invest their money in what should be recognized as a questionable venture. It will authorize an issue of stock in amount of $2,500, which is found to be the fair value of all properties now devoted to the bus business, in connection with the service herein discussed. Transfer of all properties by Mrs. Bartunek to the corporation shall be reflected by bill of sale. The order will require that no stock shall be issued and sold by the corporation until such bill of sale, transferring ownership of all properties herein discussed, shall have been entered.

Present plans of applicant contemplate operation of all bus lines as above set forth, effective April 1st, next.

[4] Applicant stated that the stock could be sold in a block to net not less than 85. The amount of the securities to be issued is small and the success of the venture questionable. Accordingly, the Commission will not criticise this discount, but will require that stock sold shall net not less than this amount. It will also require that of the twenty-five shares of stock to be issued and sold, not less than twelve shares shall be sold for cash. The revenue realized from the sale of this stock shall be applied immediately to liquidation of obligations now outstanding against bus equipment. It is impossible from the record to make definite requirements respecting depreciation. However, applicant will be expected to provide, in so far as is possible, out of operating revenue, amounts sufficient to cover depreciation in the busses used in the service.

INDIANA PUBLIC SERVICE COMMISSION.

RE INDIANAPOLIS POWER & LIGHT COMPANY.

[No. 9389.]

Service — Judicial knowledge of the Commission — Condition of heating mains.

1. The Commission took judicial knowledge of certain information in its possession concerning the amount of make-up water required by various other hot water heating systems operating in the state to compare with the condition of a particular utility under investigation, p. 477.

Service — Hot water heating — Conditions of mains.

2. The Commission was of the opinion that a hot water heating system was in a highly depreciated condition and full of leaks, where the system loss through leakage every twenty-four hours was about one and one-third times its full capacity as compared with 7.5 per cent, 20 per cent, and 2 per cent of the total capacity required to make up similar systems operating in the state to the Commission's knowledge, p. 477.

Service — Abandonment — Hot water heating system.

3. A hot water heating plant and distribution system, barely in an operating condition, and unable to function satisfactorily for any definite period, was permitted to be abandoned at the close of the current season where increased rates sufficient to rehabilitate the property would make the cost of the service prohibited, and where a steam heating system, having superior advantages, could be substituted, p. 478.

Service — Substitution of steam for hot water heating.

4. A hot water heating system in a very bad operating condition was permitted to be substituted by a steam heating plant in view of the advantages of the latter method over the former in raising heat to high house levels, the increased facility for metering the supply, and other general advantages, p. 478.

Service — Steam heating utility — Cost of extension to customer's premises.

5. In new installations the utility should pay for that part between its mains and the curb or property line, and the customer should pay for that part within the curb or property line, p. 480.

Service — Cost of extensions — Replacement — Steam heating.

6. In cases of replacement of installation, the same rule is followed as in cases of new installation, namely, that the utility should pay for the part between its main and the curb or property line, and the customer should pay for that part within the curb or property line, p. 480.

P.U.R.1929C.

Discrimination — Cost of installation — Steam heating.

7. It is discriminatory for a utility to pay for service pipes upon present patrons' premises and later to require patrons to lay and maintain service lines upon their premises, p. 480.

Service — Cost of extensions beyond property line — Steam heating.

8. The Commission decided that it would be improper policy in the case of a steam heating utility to require the utility to pay for laying, installing, or maintaining service connections or equipment from curb or property line to and in consumers' houses, p. 480.

Constitutional law — Due process — Property affixed to customer's realty.

9. To cause a utility to pay for property which would become property of another, such as by becoming affixed to the realty of its customers, without compensation is contrary to the 5th and 14th Amendments of the Federal Constitution and to § 21, art. 1 of the state constitution, p. 480.

(McIntosh, Commissioner, dissents.)

[March 12, 1929.]

Petition of a hot water heating utility to abandon service; service ordered to be abandoned and steam heating service substituted.

Appearances: F. B. Johnson and Harvey Hartsock, attorneys, for the petitioner; Wm. H. Thompson and T. D. Stevenson, Attorneys, for the respondents; Henry Dowling, Attorney, for Edna M. Christian; Smiley N. Chambers, Attorney, for city of Indianapolis.

Ellis, Commissioner: On June 2, 1928, the Indianapolis Power & Light Company filed its petition with the Public Service Commission of Indiana alleging that it was an Indiana corporation furnishing electrical energy for power and light in the city of Indianapolis and its environs, and steam and hot water for heating within the city of Indianapolis, all under and by the authority of an indeterminate permit heretofore issued by the state of Indiana through the Public Service Commission; and that on February 1, 1927, the petitioner purchased all the property, assets, and rights theretofore belonging to the then Merchants Heat & Light Company and Indianapolis Light & Heat Company.

The petition further averred that part of the property thus purchased from the former Merchants Heat & Light Company was a central heating plant located at the southeast corner of Alabama and Sixteenth streets in the city of Indianapolis, which for more than twenty-five years had generated hot water to be distributed for heating purposes to buildings in the area located between Tenth and Twenty-second streets north and south, and Illinois and Broadway east and west, which territory was, at the time of the installation of the system, commonly regarded as residence territory, the character of much of which territory has since that time gradually changed, so that now it has a large proportion of rental properties, business and apartment houses, and is zoned by the ordinance of the city for apartment and business buildings and purposes.

The petition further alleged that the service was furnished under annual contract with consumers offering the transmission of hot water for heating purposes from September 20th to May 20th, each year, at and for a flat rate of 34 cents per square foot of radiation.

After reciting the history of this hot water heating plant, the petition further alleged that this hot water heating service was an isolated service, and was in no way connected with any other operation of the petitioner; that the petitioner was entitled to receive as compensation for said service such an amount annually as would pay operating expenses, including taxes and depreciation, and a reasonable return on the fair value of the property devoted to the public use in furnishing said service.

The petition further alleged that for the heating season of 1927–1928, and for several heating seasons prior thereto, the net revenue from said hot water heating service was not sufficient to care for the actual cost of operating said system, including taxes properly allocated to said system, and wholly insufficient to earn, in addition to such operating expenses and taxes, any amount either for the depreciation on the property, or for any return whatsoever on the value of the property thus devoted to the public use.

After describing the method of operation and the transmission system, the petition further averred that this system of transmitting heat by a hot water transmission line from a central heating plant in a territory, such as this, was recognized to be an obsolete service, and could not be operated on a compensatory basis.

The petition further averred that, owing to the physical deterioration of the plant, the service was maintained with great difficulty; that the generating plant was insufficient and in a dangerous state of repair; and that there were such leaks in the transmission system as made it almost impossible for the service to be continued; that the condition of the system was such that at any time such a leak or accident might occur as to render necessary a shutdown of the entire system, or large portions thereof, which shutdown would result in great suffering to many consumers.

The petition further averred that although petitioner desired to be permitted immediately to abandon said hot water system, yet it was willing to attempt to operate said system during the ensuing heating season, that is, the season 1928–1929.

The petition closed with a prayer that the petitioner be permitted immediately to abandon the hot water central plant heating service theretofore furnished patrons by the petitioner, or that in the event the petitioner was directed to continue the said service for another heating season, such permission should be effective only as to such consumers and owners as would assume the risk of interruption of service, and that the petitioner be permitted, in any event, finally and completely to abandon said system without condition at a time not later than May 20, 1929, and for all other proper relief.

Subsequent to the filing of said petition, certain consumers constituting a committee of the patrons, filed a response, denying the right of petitioner to abandon said plant, asking that certain information be furnished respondents, and asking that the Commission set this cause for an early hearing solely on the question as to whether or not the petitioner should be required to continue its heating service during the then ensuing season.

Pursuant to respondents' request, the matter was set down for

preliminary hearing, at which time certain evidence as to the physical condition of the property and the income account of the company was introduced, after the conclusion of which hearing, the Commission, on June 29, 1928, issued its interlocutory order (anno.) P.U.R.1928E, 367, in said cause, denying the petitioner the right immediately to abandon, and postponing final hearing to a later date. Subsequent to this interlocutory order, and in response to requests for certain information by the respondents, the petitioner and repondents entered into a stipulation as to the scope of the investigation with respect to the capital account and the income account of the company.

Subsequent to the filing of the stipulation, respondents filed a motion to dismiss the cause, in which motion the city of Indianapolis, by its legal department, joined. Later this motion was overruled by the Public Service Commission of Indiana, and said final hearing was set down for trial on February 6, 1929. Prior to the final hearing, petitioner filed a supplemental petition in which it reaverred all of the allegations contained in the original petition, but offered as an alternative to the abandonment theretofore prayed for, that the petitioner install in place of the hot water heating service, a steam heating service, making the installation completely new throughout, and served from the Mill street plant of the petitioner company. Prior to the hearing, another stipulation was entered into between the respondents and the petitioner, under the terms of which all matters of income account were eliminated from the hearing, and the petitioner relied, for the purpose of this cause, on the physical condition of the present property as a reason for abandonment.

The cause was heard at the city hall, Indianapolis, on the 6th day of February, 1929, pursuant to proper legal and statutory notice, with the appearances above noted. The city of Indianapolis filed a final pleading asking that the rights of the city be protected, which, omitting caption and signatures, is as follows:

"The city of Indianapolis, by and through the legal department thereof, respectively requests the Public Service Commission as follows:

"That in any order or decree made by the Public Service Com-

mission in connection with the above entitled petition of the Indianapolis Power & Light Company, the rights of all the citizens of the city of Indianapolis be fully and amply protected.

"The city of Indianapolis further says that the relation between the electric and hot water heating departments of the petitioner, the Indianapolis Power & Light Company, is such that the operating costs of the different departments are separately kept but that the aggregate totals of profits and cost of operation of the company as a whole in connection with rate hearings as to electric light rates may or may not be so kept, and, therefore, the city of Indianapolis respectfully requests the Commission in their order herein to include an order to the effect that any disposition made of the petition now in hearing shall not be made a basis by the Indianapolis Power & Light Company for a petition to the Commission for authority either to maintain its present electric power and light rates or to increase the said rates at any future date."

At the hearing, generally speaking, the testimony on behalf of the petitioner had to do with the physical condition of the present property, the changing character of the territory served, the inadvisibility of central hot water service in said territory, and some analysis of the steam central heating system that was proposed to be substituted for the hot water. The testimony of the respondents confined itself to testimony as to the satisfactory service rendered by this plant during the present heating season, and the request that in the event the steam plant was authorized, the utility be directed to bear all the cost not only of the installation of its own plant and property, but also the entire cost of all the changes that would be made necessary on consumers' premises.

Witnesses for the petitioner carried the history of the physical condition of the property from the close of the last heating season down to the present time, showing the number and character of the leaks that had made themselves evident, and testifying more particularly with respect to the two major breakdowns during the season, the one of December 28 and 29, 1928, which closed down a large part of the entire distribution system, and the breakdown of the plant on January 2, 1929, which necessitated

a shutoff of all the consumers in the system. The evidence showed that the number of leaks was about the same as had been in the previous year but that they were somewhat more serious in character, and the engineers for the Public Service Commission who had made an appraisement of the property testified that the total physical property was, on the average, in about 38.1 per cent condition, the plant equipment being in 42.3 per cent condition, the service, including paving, in about 30 per cent condition, and the mains, including paving, in 27.2 per cent condition. Perhaps more indicative of the condition of the mains was the testimony of petitioner's witnesses to the effect that the capacity of the mains when full was about 250,000 gallons of water, and that the meter readings of water purchased from the Indianapolis Water Company showed that from the beginning of the heating season to and including January 31, 1929, there was placed into the mains an average of about 350,000 gallons of water daily. [Petitioner's Exhibit 18 omitted.]

[1, 2] In other words, according to the evidence, the distribution system lost through leakage each twenty-four hours about one and one-third times its full capacity.

The Commission will take judicial knowledge of certain information in its possession concerning amount of make-up water required by certain other hot water heating systems operating in this state. The hot water heating system at Elwood, Indiana, has a capacity of 16,967 gallons and the approximate amount of make-up water required daily is 1264 gallons, or approximately 7.5 per cent of the total capacity. The capacity of the Laporte hot water heating system is approximately 150,000 gallons, and the average amount of make-up water daily for the entire plant during the heating season is approximately 20 per cent of the total capacity. The Marion hot water heating plant has an approximate capacity of 55,000 gallons, and the average daily amount of make-up water required is 1,300 gallons, or approximately 2 per cent of the total capacity. While the Commission recognizes that conditions in the other plants named may not be comparable in all respects with the Indianapolis plant, it does appear that an enormous amount of make-up water is required for the Indianapolis plant in view of the experience of utilities

engaged in furnishing the same service in other cities. The inescapable conclusion, in the opinion of the Commission, is, that the Indianapolis property is in a highly depreciated condition, and full of leaks.

[3, 4] Respondents in cross-examination developed that less than 1 per cent of the total lineal feet of pipe was replaced since the close of the lost heating season in an attempt to show that the physical condition of the distribution system was good. The Commission, however, relying upon its own engineers, as well as the testimony of the respondent, feels that the present plant and distribution system is barely in an operating condition, and the Commission further feels that this plant cannot be expected to function satisfactorily for any definite period of time in the future, and that the hot water plant as such should be abandoned, and the Commission should authorize its abandonment at the close of the present heating season.

The question then arises as to what, if anything, should be permitted or authorized to take the place of this hot water system. The testimony, generally, indicated that if any substitute were to be made, it should be a steam plant rather than a new hot water plant, and, in fact, both respondents and petitioner agreed that a steam plant would be the advisable method of central heating for this territory, particularly in view of the changing character of the territory, the difficulty of raising hot water above the second floor (thus making it inadvisable for apartment houses), the impossibility of measuring hot water by meter, and the adaptability of steam both to metering and to the change in character of the locality from residential to business and apartment houses. There was also testimony as to the general unsuitability of hot water plants in any location today, and the evidence showed that no new installations of hot water plants are now being made anywhere.

As stated above, there was an agreement among all parties that if any substitution were made it should be a steam system, the difference of opinion between the petitioner and respondents being on the point as to who should pay for the changes in consumers' premises made necessary by the installation of steam as opposed to the old hot water system, petitioner taking the position

that it should not be called upon to make installations at any place on consumers' premises, and the respondents taking the position that the entire cost of the change, including in that cost the cost on consumers' premises, should be borne by the company.

The petitioner, through an engineering witness, put in evidence exhibits showing the estimated cost to the petitioner of a new steam transmission and distribution system served from the Mill street plant of petitioner. This included a transmission line from Mill street to the territory now served by the hot water plant, and included the cost of the entire distribution system. The exhibit gave an engineering estimate of the cost of steam production at Mill street; the cost of delivering that steam to the heating system; the cost of a new distribution system; the amount of income that would be realized, estimating that two-thirds of present radiation was conserved to the petitioner; the operating, depreciation, and tax expense; and the amount available for return on the cost of the distribution system. Briefly, this exhibit showed that there would be something like $9,000 available for a return on the $632,000 capital outlay for the distribution system, if there were 300,000 feet of radiation connected up with the property, this return being approximately 1½ per cent. In the event a smaller proportion of radiation were connected, even this return would be wiped out, but in the event a proportion greater than ⅔ per cent of radiation were connected to the system, the return on the investment would be larger, and the witnesses expressed the hope that although the new system would not be compensatory at the present time, yet that there would be, in years to come, additional radiation connected which would provide some compensatory return to the petitioner. The exhibits have been checked by the engineering department of the Commission and found to be substantially accurate.

On the point as to who should pay for the changes made on the customers' premises, respondents introduced no proof as to the propriety of requiring the company to assume this cost, nor was there any showing as to the legality of any such proceeding, the respondents contenting themselves with the statement that the consumers wished that this be done, that is, that there change over be made without any expense to the consumers themselves.

[5–9] The Commission has made a study of the law in regard to the question of requiring the company to bear the cost of the changes necessary on the premises of patrons to receive steam service in the place of the existing hot water service. Numerous rulings of courts and Commissions in cases involving this question indicate that the utility cannot be required to bear this expense. Summarized, some of the cases involving this question are as follows:

I. In new installations the utility should pay for that part between its mains and the curb or property line, and the customer should pay for that part within the curb or property line.

"The word 'connections' includes the service connections from main to curb or property line and excludes the connections from the curb to a consumer's building," says Nichols, at p. 451 of "Public Utility Service and Discrimination," in reference to the "connections" for which water companies have been required to pay.

The "service pipe" which a water company was held required to pay was that from the main to consumer's property line and no further, in: Janesville v. Janesville Water Co. 7 Wis. R. C. R. 628; Re San Gorgonio Water Co. 2 Cal. R. C. R. 706; Warren v. Murphy Water, Ice & Light Co. 4 Cal. R. C. R. 1238.

In Re Essex Board of Trade (Conn.) P.U.R.1920C, 150, 154, 155 the Commission says:

"Wherefore, for the reasons hereinbefore stated, the Guildford-Chester Water Company is hereby ordered and directed to so modify and amend its rules relative to the installation, laying and maintaining of service pipes in its Chester division and to establish and publish rules to be hereafter effective, providing and stipulating therein that the company will lay and maintain at its own expense all service pipes from the main in the street to the curb line of such street and the service pipe from the curb line to the cellar or other point of termination on patron's premises, to be laid and maintained by or at the expense of the patron or owner of the property served." South Buckhannon v. Buckhannon, Light & Water Co. (W. Va.) P.U.R.1915F, 383, 389. In this case the Commission quotes from Hatch v. Consumers'

Co. 17 Idaho, 204, 104 Pac. 670, 40 L.R.A.(N.S.) 263, as follows:

"The franchise for laying pipes in the streets and alleys and maintaining and operating a water system is granted by the municipality to the water company. The property owner has no right or franchise to dig in the streets and alleys and lay pipes, and if he should do so he would acquire no property right therein. The main and all laterals, fixtures, and connections within the franchise limit belong to the company, and altogether constitute the water system. It is not the business of the citizen or consumer to construct any part of the water company's system, nor is it the company's business to place the pipes and fixtures on the consumer's premises. There is a clear and well-defined boundary line existing between the property of the water company and the property of the lot owner,—that line is the one existing between the lot and the street or alley. The citizen owns his pipes and fixtures to that line, and beyond it is the company's property and water system. The rights, duties, and obligations of each go to this extent, and no further."

In Louisiana v. Louisiana Water Co. (Mo.) P.U.R.1918B, 774, 806, the Commission says:

"In reference to the service pipes, we hold it is the duty of the water company to furnish all labor and material to bring the service pipe to the consumer's property line, unless this is an unreasonable distance from the nearest main; and the company shall in future maintain and make all necessary repairs in all existing and future service pipes between its mains and the consumers' property lines."

"A utility should pay for all pipes to the property line, and the consumer should pay for pipes on the property." "Public Utility Service and Discrimination," by E. Nichols, p. 457, citing Re Murray, 2 Cal. R. C. R. 464.

"A gas company should properly assume the charge for the pipe and expense of laying the same from the main to the curb, and may compel the consumer to pay the expense of running the pipe to the meter." "Public Utility Service and Discrimination," by E. Nichols, p. 458.

See also Simpson v. Buffalo Gas Co. 2 P. S. C. R. (2d Dist. N. Y.) 531; Curtis v. Elmira Water, Light & R. Co. (N. Y. 2d Dist.) P.U.R.1918D, 41; Murray v. Bronx Gas & E. Co. 2 P. S. C. R. (1st Dist. N. Y.) 732; Re Waterloo Water & Light Commission (Wis.) P.U.R.1921D, 382; Re Citizens Gas & Fuel Co. (Ind.) P.U.R.1922E, 571.

In Re Public Service Co. (Ill.) P.U.R.1918A, 823, 829, the Commission says:

"It is quite generally held, in cases relating to service connections, that the piping on the consumer's premises must be laid at the expense of the owner of the property."

In Commercial Club v. Citizens Gas & Fuel Co. (Ind.) P.U.R. 1916E, 1, this Commission said, at page 29:

"The testimony of the company's manager is to the effect that the company installs services to the property line of the consumer, and the latter sustains the expense of carrying the same into the premises, which is just and reasonable."

II. In cases of replacement of installation the same rule is followed as in cases of new installation.

A water utility, ordered to lower its mains to a greater depth to prevent freezing, was required to take over, maintain, and lower to the standard depth all service pipes between the supply mains in the street and the consumer's property line that were previously maintained by the consumers, but not to change the pipes inside property line. Re Reno Power, Light & Water Co. (Nev.) P.U.R.1917E, 765.

A utility being required to install larger pipes in order to render adequate service, need bring the same only to the curb line, leaving the patrons to continue them at their own cost into their buildings. In Kane v. Spring Water Co. (Pa.) P.U.R. 1919C, 404, 413, the Commission says:

"The conclusion reached by the Commission is that whenever complaint is made, or it comes to the knowledge of respondent that, on account of the size or condition of the service pipe, inadequate pressure results to the patron, the respondent shall at its own cost replace such service pipe of proper size, extending the same to the curb line, provided, however, that the patron

will at his own cost continue the same into the building." Re Central Illinois Pub. Service Co. (Ill.) P.U.R.1920E, 223; see also Re Citizens Gas & Fuel Co. (Ind.) P.U.R.1922E, 571; South Buckhannon v. Buckhannon Light & Water Co. (W. Va.) P.U.R.1915F, 383.

III. It would be discriminatory for a utility to pay for service pipes upon present patron's premises and later to require patrons to lay and maintain service lines upon their premises.

In Re Essex Board of Trade (Conn.) P.U.R.1920C, 150, the Commission holds it discriminatory for some customers to be required to pay for laying and maintaining service lines from main to cellar, while others were required only to lay and maintain service pipes from curb line to cellar.

In the following cases, because it had been the policy for old customers to pay for service lines from mains to their cellars, the utilities were required to charge their new customers for service lines from mains to cellars, to avoid discrimination. Alter v. Water Comrs. of Manitowoc, 10 Wis. R. C. R. 387; Re Delavan, 12 Wis. R. C. R. 148; Leap v. Swedesboro Sewer Co. (N. J.) P.U.R.1925A, 632; West Allis v. West Allis Gas Co. (Wis.) P.U.R.1919F, 370. In Re Waterloo Water & Light Commission (Wis.) P.U.R.1921D, 382, 384, the Commission says:

"Although it seems clear, therefore, that services as far as the curb constitute a part of the equipment which should be installed by the utility, where the policy has been followed consistently of having property owners bear the expense of installing, it may be best to continue this policy. No hardship is imposed thereby upon patrons of the utility, and to continue the policy of having property owners pay for services will avoid whatever confusion might result from a change of policy. Alter v. Water Comrs. of Manitowoc, 10 Wis. R. C. R. 387, 394."

IV. It would be improper policy in the instant case to rule that a public utility should pay for the laying, installation, or maintenance of service connections or equipment from curb or property line to and in consumers' houses.

A. Such service connections and equipment inside consumers' property line would under certain circumstances become fixtures and part of the realty belonging to the consumers.

"To the curb at least the service belongs to the company, and it is within the entire control of the company. Within the lot line it belongs to the consumer, and in case of discontinuance of use the company would have no right to invade the customer's premises to remove the pipe." Curtis v. Elmira Water, Light & R. Co. (N. Y. 2d Dist.) P.U.R.1918D, 41, 43.

The following have been held to be fixtures and a part of the realty:

Water pipes. Philbrick v. Ewing, 97 Mass. 133; Dodge City Water & Light Co. v. Alfalfa Land & Irrig. Co. 64 Kan. 247, 67 Pac. 462.

Shower baths, boilers, etc. Fehr Construction Co. v. Postal System of Health Building, 288 Ill. 634, 124 N. E. 315.

Water pipes, cisterns, and attachments. Young v. Hatch, 99 Me. 465, 59 Atl. 950; Smyth v. Sturges, 108 N. Y. 495, 15 N. E. 544.

Hot water radiators. Young v. Hatch, *supra*.

Steam heating apparatus. Pond & Hasey Co. v. O'Connor, 70 Minn. 266, 73 N. W. 159; Keeler v. Keeler, 31 N. J. Eq. 181; Realty Associates v. Conrad Construction Corp. 185 App. Div. 464, 173 N. Y. Supp. 25.

Gas and electric appliances. Filley v. Christopher, 39 Wash. 22, 80 Pac. 834.

B. To cause even a public utility to pay for property which would become property of another without compensation would be contrary to the 5th and 14th Amendments of the Constitution of the United States, and contrary also to § 21 of Article 1 of the Constitution of the State of Indiana.

The constitutional provisions and principle above mentioned seem to be the underlying reason for the courts and Commissions recognizing the curb or property line as the line separating the connections to be paid for by the utility from those to be paid for by the consumer, to wit, those between the mains and the property line to be paid for by the utility, and those between the property line and the consumer's building and the equipment in the building to be paid for by the consumer.

The Commission, therefore, finds little authority for compelling the company to pay for services within consumer's prop-

erty and equipment in consumer's houses. The weight of the authorities are to be contrary. Such a request, it appears, is against all usual practice, and, in the opinion of the Commission, would clearly be discriminatory.

Aside from the legal standpoint, however, the Commission feels that it is not equitable to attempt to compel the company to make such installations in consumers' premises at the company's cost. The evidence showed that the company is offering to spend from $1,500 to $2,000 per consumer in this distribution system and transmission line, and receive on that expenditure, at least at present, no adequate return.

Considering all the evidence, the Commission is of the opinion and finds as follows:

1. That the present hot water heating system of the petitioner company located as described in the petition, is in such a deteriorated, physical condition, as to make it impossible of continuous future operation, and that the company should be authorized to abandon it at the close of the present heating season upon the express condition that all of the provisions of finding number two in this order shall be complied with before the beginning of the heating season of 1929–30.

2. That the petitioner should be authorized and directed to install a steam heating plant in substantial accordance with the plans submitted at the hearing in this cause, at its expense, the company paying for all services from the mains to the property line, the consumers paying the cost of such changes on their premises as are made necessary by the change from a hot water to a steam system, and that the petitioner be authorized and directed to charge for the service rendered the same rates as are now authorized by the metered steam tariff covering the steam service now given to patrons in the down town area of the city of Indianapolis, which steam service shall be governed generally by the rules and regulations of the petitioner company covering metered steam service, approved by and now on file with this Commission; provided, however, that at the option of any patron, the company shall install the services from the patron's property line to the cellar, the patron paying to the company the actual cost only of

labor and materials used in making such installation; provided, further, that the company shall have available steam heating experts to advise any patrons who desire information concerning the changes made necessary on their premises, the company providing the services of such experts without cost to the patrons.

An order in accordance with the above findings will be made by the Commission.

Singleton, McCardle, Harmon, Commissioners, concur.

McIntosh, Commissioner, dissenting: "On June 2, 1928, the Indianapolis Power & Light Company filed its petition with the Public Service Commission of Indiana alleging that it is an incorporation furnishing electrical energy for power and light in the city of Indianapolis and its environs and steam and hot water for heating within the city of Indianapolis—all under and by the authority of an indeterminate permit heretofore issued by the Public Service Commission of the state of Indiana and that on February 1, 1927, the petitioner purchased all of the property, assets, and rights heretofore belonging to the then "Merchants Heat & Light Company" and the "Indianapolis Light & Heat Company."

"Petitioner further avers that part of the property thus purchased from the former 'Merchants Heat & Light Company' and now operated by petitioner, is a central plant located at southeast corner of Alabama and Sixteenth Streets in the city of Indianapolis, which for more than twenty-five years has generated hot water to be distributed for heating purposes to buildings in the area located generally between Tenth and Twenty-Second streets, north and south, and between Illinois and Broadway, East and West, which territory was, at the time of the installation of the system, commonly regarded as the choice residence territory of the city, the character of which has, since that time, gradually changed to a larger proportion of rental properties and apartment houses. This serivce was furnished under an annual contract offering the transmission of hot water for heating purposes from September 20th to May 20th each year (known as a heating season), at and for a rate of 34 cents for square foot of radiation."

"Petitioner further avers that this service was initiated by the Home Heating & Lighting Company, a corporation organized October 1, 1901, and that it was purchased on July 18, 1905, by the Peoples Heat & Light Company, which in turn, solds its property August 27, 1913, to the Merchants Heat & Light Company, which company has heretofore averred, sold all of its property to the Indianapolis Power & Light Company, February 1, 1927."

The above quoted from the original petition filed in this cause is followed by various statements concerning the location and physical condition of the plant herein referred to, to the inadequacy of the revenue accruing to the Indianapolis Power & Light Company from said plant. Other purported facts tending to support the petitioner's prayer for abandonment of said heating plant are set out. The petitioner prays, first, for authority from this Commission, to immediately abandon the heating system in question; second, if such authority is not given for immediate abandonment, that such authority be given to take effect not later than May 20, 1929.

In the regular and legal course of procedure, the above petition came to hearing and subsequent to said hearing, an order was issued by the Commission as of June 27, 1928, denying the prayer and right of the petitioner immediately to abandon said heating system and postponing final hearing in said cause to a future date. Final hearing in this cause occurred February 6, 1929 in the City Hall, Indianapolis, Indiana. Prior to this hearing and subsequent to the order issued by this Commission, June 29, 1928 (anno.) P.U.R.1928E, 367, the petitioner filed with this Commission its supplemental petition in which was set out substantially the matters contained in the original petition but offered to install a steam heating system to take the place of the now existing hot water heating system.

Prior to this hearing, certain stipulations were entered into between the petitioner and respondents through their respective attorneys. Under the terms of these stipulations, all matters of income account were eliminated from the hearing. The petitioner, therefore, relied upon the physical condition of the

plant or system to justify the request for abandonment of the present system of heating and installing in lieu thereof a steam heating system, the steam to be supplied by the petitioner from its Mill street plant located in Indianapolis.

The city of Indianapolis, by its legal representative, filed with the Commission its final pleading in the above matter, which, omitting caption and signatures, is as follows:

"The city of Indianapolis by and through the legal department thereof, respectfully requests the Public Service Commission as follows:

"That in any order or decree made by the Public Service Commission in connection with the above entitled petition of the Indianapolis Power & Light Company, the rights of all the citizens of the city of Indianapolis be fully and amply protected.

"The city of Indianapolis further says that the relation between the electric and hot water heating departments of the petitioner, the Indianapolis Power & Light Company, is such that the operating costs of the different departments are separately kept but that the aggregate totals of profits and cost of operation of the company as a whole in connection with rate hearings as to electric light rates may or may not be so kept, and, therefore, the city of Indianapolis respectfully requests the Commission in their order herein include an order to the effect that any disposition made of the petition now in hearing shall not be made a basis by the Indianapolis Power & Light Company for a petition to the Commission for authority either to maintain its present electric power and light rates or to increase the said rates at any future date."

The petitioner filed its supplemental petition in this Cause, No. 9389, January 31, 1929, the same being before the Commission at time of hearing, was given consideration as the petitioner's petition then and there. The supplemental petition reavers and remakes all allegations contained in the original petition in this cause. It avers further that the "petitioner nevertheless, realizes that such abandonment will result in *disadvantages* and *hardships* to the patrons of said hot water

service" and "in an attempt to avoid such *disadvantages and hardships as far as possible,* notwithstanding such abandonment and to provide said patrons with *some* heating service in lieu of that which this petitioner prays to abandon, this petitioner has, since filing its petition herein as aforesaid, caused engineers and heating experts to make a survey of its hot water heating service and its location and neighborhood with a view of devising and suggesting some substitutionary service." This petitioner further avers that, as a result of the aforesaid survey by engineers and heating experts and suggestions made by them, this petitioner believes that *"it may be possible"* in lieu of its present hot water heating service herein asked to be abandoned as aforesaid to provide and offer to the patrons of the present hot water heating service, a steam heating service, that is, with steam in new mains, laid approximately where the present hot water mains of said service now lie and available to said patrons upon their providing upon their own premises, a two-pipe system adapted to steam heating and with necessary apparatus so that each radiator or heating unit in their respective premises can be turned on and off independently of all other radiators or units and upon their making application to and contact with this petitioner in substance like the application and contract used by and with patrons of the petitioner's down town Indianapolis steam heating service, the terms, conditions, and rates of which have been approved by and are now on file with this Commission and are now in effect form of which application and contract is hereto annexed marked "Exhibit A" and made a part hereof.

"Wherefore this petitioner, still prays that it be permitted to abandon its hot water central plant heating service heretofore furnished to patrons and consumers at a date not later than May 20, 1929, unconditionally, and if the Commission will not grant authority to this petitioner so to discontinue said service unconditionally, then this petitioner prays that the Commission grant authority to this petitioner to discontinue and abandon its said hot water central plant heating service not later than May 20, 1929, upon the sole condition that this petitioner shall provide for the heating season of 1929–30 and

thereafter, a steam heating service through new mains laid approximately in the location of the present old hot water mains mentioned in the original petition filed herein, available to such patrons as will fit their premises with a two-pipe system adapted to steam heating, and with suitable apparatus so that each radiator or heating unit in their respective premise can be turned on and off independently of all other radiators or heating units, and upon their making application to and contract with this petitioner in substance like the application and contract used by and with patrons of the petitioner's down town, Indianapolis, steam heating service, the terms, conditions, and rates of which have been approved by and are now on file with this Commission and are now in effect, form of which application and contract is hereto annexed, marked 'Exhibit A,' and made a part hereof."

The above matter under quotation marks is the substance of the petitioner's supplemental petition.

The Commission is asked in the petitions in this cause to authorize certain specific things: First, to authorize the Indianapolis Power & Light Company to unconditionally abandon a certain heating system which is but a part of the service it offers to the public in the city of Indianapolis; second, if authority to unconditionally abandon said system be denied, then said Indianapolis Power & Light Company asks authority to abandon its central hot water heating system and install in lieu thereof a steam heating system; third, the petition asks the Commission approve terms of installation of said steam heating system, which provide additional expense to the present consumers of hot water heat in the installation of the proposed steam heating system; also additional inconvenience to the patrons in making application for service and signing contract for same. It is very probable that such contracts when signed will require patrons to pay a higher rate for heat.

The first prayer of the petitioner to unconditionally abandon the service of hot water heating is unsound and should be denied. It is a proposal to break or abrogate a contract entered into between citizens on the one hand and a public utility company on the other, when but one party to the contract favors such

abrogation. The other party (the citizen consumers) are opposed.

The petitioner shows in the petition that citizens of the heating zone in question began taking service from the Home Heating & Lighting Company, a corporation organized October 1, 1901; that later the Peoples Heat & Light Company purchased this property July 18, 1905. The Merchants Heat & Light Company purchased the same August 27, 1913, and on February 1, 1927, the petitioner, the Indianapolis Power & Light Company came into possession of this property by purchase.

Here is evidence of a service being rendered under contract for more than a quarter of a century. The patrons are not asking that this contract be set aside nor that the service cease. In fact, they object to doing either.

The petitioner offered evidence to show that the heating system is in a run-down condition; that leaks in the mains show great waste of water and that conditions, generally, are unsatisfactory. No evidence was offered that the rate charged for service had been lowered on account of these conditions. The consumers are charged and pay for adequate and efficient service. Evidence of the petitioner's engineer discloses that no special effort had been put forth by the petitioner in recent time to maintain the system in good condition. Evidence from the engineer, showed replacement of mains less than one per cent of the total per annum.

Patrons testified that the service is better this year than last. From the testimony offered, it appears that the petitioner had in mind the abandonment instead of maintaining a good working condition of the plant.

If the public utility company in this case can elect to abandon a service which has been in existence in a particular section of the city of Indianapolis for so many years over the opposition of the patrons, what would prevent this company or any other from abandoning any service anywhere at any time it sees fit and it seems to the company to be advantageous to do.

Are we to presume that should the Indianapolis Power & Light Company be granted this privilege, that later on it could

require its patrons to change again to the use of some other product such as electricity or gas should it have these to offer and desire to do so?

Might not large power users who have expensive equipment for use in their industries be required at any time to change their equipment from adaptation to present service to some other equipment adapted to some different service which may be proposed by the Public Service Company which furnishes their power? The loss and expense here to users of the public utility's products would assume larger proportion than the expense involved in the instant case, but the principle is identical in both cases.

Such a procedure I believe to be contrary to sound public policy and contrary to law.

In the Commission's order now being approved, granting the prayers of the petitioner, to abandon hot water heat and substitute therefor steam heat and placing certain costs of this change upon the patrons, many citations of law are given. The legal references, no doubt, are unquestioned law in their proper application. We would not dispute that on taking service from a utility such as furnishes water or heat that the proprietor of the premises should prepare such premises to receive such service. This has been done by the patrons of the petitioner in the present hot water heating zone. I see nothing in the law nor do I believe any can be cited to compel consumers, against their wish, to pay for a change of service which the consumers neither demand nor want.

The case of the Indianapolis Water Company in the recent meterization order approved by this Commission January 4, 1929, P.U.R.1929B, 354, requiring the Water Company to pay the entire cost of meterization where service had already been given and appliances and fixtures had been paid for by the property owner when such service was originally extended is a comparable case.

In the water meterization case, this Commission initiated proceedings on its own motion; held a hearing in the matter. The outcome was that the Commission issued its order of January 4, 1929, *supra,* requiring the Indianapolis Water Com-

pany to bear all expense connected with the further meterization of properties where service had previously been extended. That order was approved by all Commissioners, I being absent. Regardless of whether at a certain stage of the proceedings the water company withdrew from further participation in the hearing, the Commission issued and approved without a dissenting vote said order. Obviously, it was the belief of the Commission then that the findings in said order were just and equitable; otherwise it would not have approved the same. If it were just and equitable for the Water Company to bear the expense of the change proposed in their meterization plan, I cannot see why that principle does not apply in the instant case.

Moreover, the Water Company was proceeding under the provisions of an order issued by the Public Service Commission in 1923, which might have been construed in its favor with respect to the question of expense.

It is my opinion that this Commission cannot be consistent and grant the prayers of this petition.

When the petitioner acquired this property it showed to the Commission, February, 1927, that the condition of this heating system was then in 85 per cent condition. It now avers or attempts by evidence to show it is in approximately 30 per cent condition. The Commission must take note of this wide difference in a space of two years. One or the other of these figures must obviously be incorrect.

To grant the prayers of this petition on original proceeding is in violation of § 110 of the Shively-Spencer Utility Act.

The above section expressly sets out certain powers of municipalities with regard to public utilities. Among the powers set out are "to determine by contract, ordinance or otherwise the equality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product or service within said municipality." Original jurisdiction in matters involved in this petition lie with the municipal council. Appellant jurisdiction only lies with this Commission. Nothing in these proceedings indicate that this case lies with this Commission on appeal.

It is urged by some that public utilities may not go upon

property owners premises to place pipes or other materials, since the same might be claimed by the property owner after installation. Such an argument seems to be far-fetched in view of the fact that telephone companies place their switchboards, telephone trunks, and other appliances where these may be needed within or upon the premises without danger of losing ownership of such property. Meters for electric service are everywhere attached to the property within and without. Water meters are in basements everywhere and no fear of loss of the same occurs to the water company nor need there be fear.

In this cause, attorneys for respondents, excepting attorney Henry Dowling for Edna M. Christian, respondent, agreed with attorneys for petitioner to submit no briefs covering the evidence and the law governing this case. I have, therefore, been somewhat handicapped in the daily flow of work for legal aid in support of this opinion. In support of this opinion, I refer to the very recent decision of the United States Supreme Court in United Fuel Gas Co. v. Railroad Commission, — U. S. —, 73 L. ed. —, P.U.R.1929A, 433, 437, 438, 49 Sup. Ct. Rep. 150. "If a state may require a public service company subject to its control to make reasonable extensions of its service in order to satisfy a new or increased demand present or anticipated . . . obviously the latter may be compelled to continue to use present facilities to supply an existing need so long as it continues to do business in the state. The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders. This duty does not permit it to pick and choose and to serve only those portions of the territory which it finds most profitable, leaving the remainder to get along without the service which it alone is in a position to give. An important purpose of state supervision is to prevent such discrimination (see People ex rel. New York & Q. Gas Co. v. McCall, 245 U. S. 345, 351, 62 L. ed. 337, P.U.R.1918A, 792, 38 Sup. Ct. Rep. 122) and if a public service company may not refuse to serve a territory where the return is reasonable or even in some circumstances where the return is inadequate but that on its total related business is sufficient . . . it goes without saying that it may not use its privileged position in

conjunction with the demand which it has created as a weapon to control rates by threatening to discontinue that part of its service if it does not receive the rate demanded.

"The powers of the state so far as the Federal Constitution is concerned were not exceeded by the action of the Commission, in compelling appellants to continue their service in the cities named so long as they continued to do business in other parts of the state and to there avail of the extraordinary privileges extended to public utilities."

In the supplemental petition, the petitioner nowhere proposes to give adequate and satisfactory service. In line 23, page 1, supplemental petition, there is proposed "some heating service." In lines 8 and 9, page 2, supplemental petition, "this petitioner believes that it may be possible."

In view of all the facts referred to here, I cannot concur with Commissioners in approving an order granting requests prayed for. The consumers and rate payers have certain positive rights which such an order strikes down. The Public Service Company, the petitioner, has certain positive duties and responsibilities from which such an order relieves them.

In concluding, I may say that an order granting the prayers of the petitioner in the instant case should not be issued and promulgated for the following reasons:

1. It would be contrary to law in that matters involved here should be first taken up with city council of Indianapolis. See § 110, Shively-Spencer Utility Commission Act.

2. It would not be in keeping with the letter nor the spirit of the law with respect to the duty of this Commission in protecting the rights of the public.

3. It would be inconsistent with the former views of this Commission embodied in Order No. 9588, Re Indianapolis Water Co. (Meterization Case) approved January 4, 1929, P.U.R.1929B, 354.

4. It would tend to establish a precedent that might impose unbearable burdens and inconveniences upon the public.

5. It is contrary to the conclusions reached in the United States Supreme Court decision in United Fuel Gas Co. v. Railroad Commission, *supra*.

6. The petitioner nowhere proposes in its petitions nor does the order now approving the petitioner's prayers, require sufficient and adequate heating service in the heating zone here under consideration.

While this dissenting opinion was being submitted to the conference, attorneys for the respondents, by Mr. Stevenson, handed me the attached respondent's memorandum of authorities, which, by agreement with the attorney for the petitioner, namely, Fred Bates Johnson, should be authorized under their stipulation agreement. Said memorandum of authorities is hereby attached hereto and made a part hereof by reference. [Memorandum omitted.]

P.U.R.1929C.